

DJA0133

Auto Loss Trans to Ficklin - Submitted By:37230

The following action(s) were taken on this loss:
Reassign Loss

Bulk transfer for Unit move

DDC3

May 20, 2017 at 10:38 a.m. CT

L1279 - Jimmy Ficklin

Documentation Number 98

Received demand and medical from insured atty Dated 4/28/2017. Due 5/28/2017 \$50K UIM limit.

Other party had no insurance.

DDC3

May 24, 2017 at 5:14 p.m. CT

L1279 - Jimmy Ficklin

Documentation Number 99

I am going to set this file and her parents claim up for SIR now that I know that she is having symptoms similar to a brain injury.

I have the reserve on this underlying claim at \$50K UM limit

I am increasing the reserve on the parents claim file which is excess to \$200,000 UM.

This is the parent's policy with UM/UIM of 300/500.

Elizabeth Fortson's auto policy has claim #16743005-3. It has 50/100 UM/UIM

She is a family member with her vehicle shown as garaged at her parents address. She rents her residence in Cary, NC and is shown as a college student working on a bachelor degree.

NC policies and stackable.

Claimant is uninsured.

Completed majority of the medical review of Elizabeth Fortson.

I do not have an actual demand the Elizabeth's attorney just sent me the medical for review. She is still treating.

Discussed with MGR and we will send the medical to neurologist for review. I will obtain recommendation from defense counsel in this jurisdiction.

The main alleged medical problem that may be related to the accident is carotid artery dissection. It begins as a tear in one of the carotid arteries of neck , which allows blood under the arterial pressure to enter the wall of the artery and split its layers. The Dissection of the internal carotid artery can occur intracranially or extracranially, with the latter being more frequent. Internal carotid artery dissection can be caused by major or minor

trauma.

The symptoms she is experiencing are She has intermittent facial numbness/weakness in various locations, increased difficulty swallowing large items, increased difficulty with activities she used to excel at, such as drawing and crochet, stammering and word finding difficulty and forgetfulness. She has sensitivity to bright light and loud noises. She has decreased grip strength. She has had may of these symptoms since her accident but seem to be worsening.

DDCS

May 24, 2017 at 5:25 p.m. CT

[L1279](#) - Jimmy Ficklin

Documentation Number 100

SIR 6/7

DDCS

May 24, 2017 at 5:26 p.m. CT

[L1279](#) - Jimmy Ficklin

Documentation Number 101

OBC to Elizabeth Fortson's atty. I wanted to let him know that I am still reviewing the medical he submitted and want to determine her current status.

DDCS

May 25, 2017 at 12:32 p.m. CT

[L1279](#) - Jimmy Ficklin

Documentation Number 102

Per doc # 41 in double file 00272015-15 I spoke with Elizabeth's atty and I am sending a reservation of rights out to Elizabeth Fortson through her atty. The medical records and our records raise a question as to whether Elizabeth Fortson was residing with her parents Mr. and Mrs. Alvin Fortson, at the time of the accident. Unless there is information to the contrary, Elizabeth, does not qualify as an insured under her parents policy since she was not a resident of their household.

DDCS

May 26, 2017 at 2:21 p.m. CT

[L1279](#) - Jimmy Ficklin

Documentation Number 103

Panel counsel in Wake county near Raleigh, NC where accident occurred. This is Firm of Hedrick, Gardner, Kincheloe and Garofalop. contact is Mel Garofalo phone is (919)-832-9424. I want to discuss a potential Neurologist or other specialist.

DDCS

May 26, 2017 at 3:24 p.m. CT

[L1279](#) - Jimmy Ficklin

Documentation Number 104

General Correspondence-S200
Status: Submitted
Address: MICHAEL J MALONE
4600 MARRIOT DRIVE
SUITE 150
RALEIGH NC 27612-3367

Delivery Option: Fax
Channel Info: 9194200475

DOC3 **May 26, 2017 at 3:33 p.m. CT** L1279 - Jimmy Ficklin Documentation Number 105

Per IET, I contacted NI's attorney and advised I am sending him the \$50,000 UIM limit under Elizabeth Fortson's auto policy. I faxed in a letter as well. I have not received notice of liens or subrogation claims to date. I included in my letter that they are responsible for paying any liens or subrogation claims out of the check.

With respect to double file 00272015-15, which is NI's parents auto policy. He has my reservation of rights and understands the issue with respect to the question whether she qualifies as an insured under their policy since she lives at a different address. He is going to gather documentation to support that she stayed with her parents quite often and may qualify as a resident of their household.

DOC3 **May 26, 2017 at 3:43 p.m. CT** L1279 - Jimmy Ficklin Documentation Number 106

I am closing file to subro. We will possibly have subro for UIM on the double file 2720215-15 if there is coverage for Elizabeth Fortson under her parent's policy.

It has a 300/500 UIM limit.

DOC3 **May 26, 2017 at 3:43 p.m. CT** L1279 - Jimmy Ficklin Documentation Number 107


Make Contact
Associated To: ELIZABETH V FORTSON
Status of Make Contact was changed from New to Complete by L1279.

DOC3 **May 26, 2017 at 3:43 p.m. CT** L1279 - Jimmy Ficklin Documentation Number 108


Make Contact
Associated To: JACOB THOMPSON
Status of Make Contact was changed from New to Complete by L1279.

DOC3 **May 26, 2017 at 3:43 p.m. CT** L1279 - Jimmy Ficklin Documentation Number 109


Take Statement
Associated To: ELIZABETH V FORTSON
Status of Take Statement was changed from New to Not Applicable by L1279.

 **May 26, 2017 at 3:43 p.m. CT** [L1279](#) - Jimmy Ficklin Documentation Number 110

Take Statement
Associated To: JACOB THOMPSON
Status of Take Statement was changed from New to Not Applicable by L1279.

 **May 26, 2017 at 3:47 p.m. CT** [L1279](#) - Jimmy Ficklin Documentation Number 111


Payment Requested
Payment Requested for USD 50000.00 to payee
HENDREN AND MALONE and ELIZABETH VFORTSON for:
Combined Uninsured/Underinsured Motorists Bodily Injury - ELIZABETH V FORTSON

 **May 26, 2017 at 3:57 p.m. CT** [40360](#) - Brian [REDACTED] Documentation Number 112

Manager Review - Check Approval - -UMBI \$50K
\$50k Auth in IET
Hold harmless letter sent with UIM offer -Approved check

 **May 26, 2017 at 3:58 p.m. CT** [40360](#) - Brian [REDACTED] Documentation Number 113

Payment Approved
Payment Approved for USD 50000.00 to payee
HENDREN AND MALONE and ELIZABETH VFORTSON for:
Combined Uninsured/Underinsured Motorists Bodily Injury - ELIZABETH V FORTSON

 **May 26, 2017 at 3:58 p.m. CT** [40360](#) - Brian [REDACTED] Documentation Number 114

CLAIM CLOSED
CLAIM CLOSED TRANSACTION SENT ON 05/26/2017



USAA May 26, 2017 at 3:58 p.m. CT [View Conversation](#)

A payment of \$50,000.00 was issued 05/26/2017 to HENDREN AND MALONE and ELIZABETH V FORTSON for your auto claim. The nature of payment is: Payment under Combined Uninsured/Underinsured Motorists Bodily Injury coverage.

 **May 26, 2017 at 9:43 p.m. CT** [99999](#) - Documentation Number 115

CLAIM SENT TO ISO
CLAIM SENT TO ISO

DOC3 May 30, 2017 at 10:52 a.m. CT 41314 - Stacy [REDACTED] Documentation Number 116

NEW LOSS REVIEW/ SUB INJ
THIS IS A UM LOSS.
FILE ALREADY W/WILBER
WILL SEND THE UMBI INFO TO THEM
REFUSING FILE.

DOC3 December 4, 2017 at 2:26 a.m. CT Q2476 - Anil [REDACTED] Documentation Number 117

CLAIM CLOSED
CLAIM CLOSED TRANSACTION SENT ON 12/04/2017

DOC3 December 4, 2017 at 2:26 a.m. CT Q2476 - Anil [REDACTED] Documentation Number 118

Voucher - 824958 - \$4579.71 - WAKEMED -
12/1/2017

9042 58 Voucher Keyed - UM Refund

DOC3 December 4, 2017 at 7:54 p.m. CT 99999 - [REDACTED] Documentation Number 119

CLAIM SENT TO ISO
CLAIM SENT TO ISO

DOC3 December 5, 2017 at 8:03 p.m. CT 99999 - [REDACTED] Documentation Number 120

CLAIM SENT TO ISO
CLAIM SENT TO ISO

DOC3 December 8, 2017 at 7:53 a.m. CT 71045 - Mary [REDACTED] Documentation Number 121

RECOVERY/ WILBER
To: 'DebtNet'
SENT SUPPORTS

Update total amount \$58362.70
All exposures closed


Collision Amount : 6,962.70
Comp Amount :

DJA0138

UMPD Amount : 1750.00
 RR Amount :
 MP Amount :
 PIP Amount :
 UM/UIM Amount : 50,000.00
 Deductible : 0
 Waived Y/N : y
 Salvage Amount : -350.00
 Total Amount : 58362.70

 **January 19, 2018 at 8:02 p.m. CT** [99999](#) - Documentation Number 122


CLAIM SENT TO ISO
 CLAIM SENT TO ISO

 **January 21, 2018 at 7:17 p.m. CT** [99999](#) - Documentation Number 123



CLAIM SENT TO ISO
 CLAIM SENT TO ISO

 **April 27, 2018 at 6:39 p.m. CT** [99999](#) - Documentation Number 124


CLAIM SENT TO ISO
 CLAIM SENT TO ISO

 **May 16, 2018 at 6:31 p.m. CT** [99999](#) - Documentation Number 125

CLAIM SENT TO ISO
 CLAIM SENT TO ISO

 **July 20, 2018 at 9:54 a.m. CT** [S9348](#) - Opal  Documentation Number 126

IBC REP TO REP
 S/W JOSE
 NEEDED TO RMV IV FROM POLICY
 ADVS CLAIM CLOSED (1/20/18) EXP FOR SUBRO
 NFQ

 **February 12, 2019 at 10:57 a.m. CT** [39422](#) - Arlene Vela Documentation Number 127

Please print capture certified policy into
 e-doc and diary 4251-35.

DJA0139

Requestor: Arlene Vela
Requestor phone: 8-4689

Thank you.

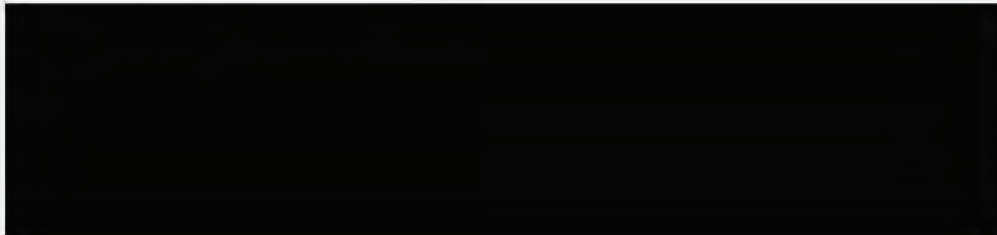
DDCS

February 14, 2019 at 11:20 a.m. CT [36452](#) - Juleen [REDACTED] Documentation Number 128

recd request for cert copy of policy/completed/snt for notary
signatures/after signatures notary will upload to edocs

DDCS

February 15, 2019 at 3:31 p.m. CT [V7366](#) - Jennifer [REDACTED] Documentation Number 129



DDCS

February 15, 2019 at 3:33 p.m. CT [V7366](#) - Jennifer [REDACTED] Documentation Number 130



DJA0140

Reviewing Integrated View oldest to newest

Data as of 02-20-2019 at 8:20:58 AM CT

< Page **2** of 2 >

 Refresh

 Close

WRI.LOSSSUMMARY&lossnumber=003&desktop_integration=Y&detail_page_alias=Wri.LossSummary&tool_id=PC.LOSSFOLDER&USAA_BROWSER_COMM_ORIGINATOR=&trans_log_conv_nr=340&member_number_disp=016743005[2/20/2019 8:32:03 AM]

Loss Summary

Add to Loss:

SELECT

ADD

Loss Event Overview

ELIZABETH V FORTSON - Member

Loss Details

Claims Plan

Alerts

Exposures

Invoices & Receipts

Estimates

Financials

Liability Assessment

Policy

RALEIGH PD - Police/Fire

TV 2004 CADILLAC CTS 4D

CV 2012 HYUNDAI

JACOB THOMSON - Driver Owner

eDocs

Claims Documentation

Integrated View

Refresh

To Bottom

Toolbar

The deductible for Collision has already been waived.

Payments

Payment Settings

Payments

Search by date range

Review Payments

Requested Date	Amount	Payee	Issued Date	Method	Status
05/26/2017	\$50,000.00	HENDREN AND MALONE and ELIZABETH V FORTSON	05/26/2017	Printed check	Cleared
01/21/2017	\$5,000.00	WAKEMED	01/22/2017	Printed check	Cleared
12/05/2016	\$6,962.70	ELIZABETH V FORTSON	12/05/2016	Printed check	Cleared
11/14/2016	\$1,350.00	ELIZABETH V FORTSON	11/14/2016	Printed check	Cleared
11/14/2016	\$400.00	ELIZABETH V FORTSON	11/14/2016	Printed check	Cleared

CLR Help

Refunds

Voucher ID

0824958

Amount Remitter

\$4,579.71 WAKE MED

Processed Date

12/04/2017

Refresh

To Page

TAB 11

DJA0142

Amount: \$1,350.00 Sequence Number: 7292076350
Account: [REDACTED] Capture Date: 01/17/2017
Bank Number: 11900571 Check Number: 16678277

FACE OF DOCUMENT HAS A COLORED BACKGROUND. THE BACK CONTAINS AN ARTIFICIAL WATERMARK. HOLD AT ANGLE TO VIEW.



USAA Garrison Property and Casualty Insurance Company
PO Box 33490 51-44/119 CT
San Antonio, TX 78265

0016678277

DATE
11/14/2016

CHECK AMOUNT
\$**1,350.00

PAY **One Thousand Three Hundred Fifty and 00/100 s**

TO ELIZABETH V FORTSON
THE
ORDER
OF:

USAA #. 016743005 / LR #: 3

NATURE OF PAYMENT:

Payment under Uninsured Motorists Property Damage Coverage ELIZABETH V
FORTSON, 2004 CADILLAC CTS 4D. loss of use of vehicle
BANK OF AMERICA - HARTFORD, CT

VOID 180 DAYS FROM ISSUE DATE

Shirley Parker
AUTHORIZED SIGNATURE

⑈0016678277⑈

2240015665⑈

4598848

⑈4598848⑈ 1/17/2017 E-DEPOSIT TO MLPS *ELECTRONIC ENDORSEMENT GUARANTEED*

of
for Deposit Only to the acct

RUB VIGOROUSLY AND COLOR WILL CHANGE

Electronic Endorsements:

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
01/17/2017	007292076350	111310346	Rtn Loc/BOFD	Y		BANK OF AMERICA, NA

CONFIDENTIAL

Garrison P&C 00049993

DJA0143

Amount: \$400.00 Sequence Number: 7292076384
Account: [REDACTED] Capture Date: 01/17/2017
Bank Number: 11900571 Check Number: 16678276

FACE OF DOCUMENT HAS A COLORED BACKGROUND. THE BACK CONTAINS AN ARTIFICIAL WATERMARK. HOLD AT ANGLE TO VIEW.



USAA Garrison Property and Casualty Insurance Company
PO Box 33490 51-44/119 CT
San Antonio, TX 78265

0016678276

DATE
11/14/2016

CHECK AMOUNT
\$**400.00

PAY **Four Hundred and 00/100 s**

TO ELIZABETH V FORTSON
THE
ORDER
OF:

USAA # 016743005 / LR #: 3

NATURE OF PAYMENT:

Payment under Uninsured Motorists Property Damage Coverage less \$100.00
Deductible, ELIZABETH V FORTSON, 2004 CADILLAC CTS 4D, \$400

BANK OF AMERICA - HARTFORD, CT

VOID 180 DAYS FROM ISSUE DATE

AUTHORIZED SIGNATURE

⑈0016678276⑈

2240015555⑈

4598847

15-NOV-2016 17:11:11 REP: 11 TO: HLF'S AGENCE: NE ROMNT GU-BA TEL: 1

act 9
for Deposit into the
[REDACTED]

RUB VIGOROUSLY AND COLOR WILL CHANGE


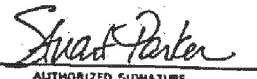
Electronic Endorsements:

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
01/17/2017	007292076384	111310346	Rtn Loc/BOFD	Y		BANK OF AMERICA, NA

CONFIDENTIAL

Garrison P&C 00049994

Amount: \$6,962.70 Sequence Number: 9492157751
 Account: [REDACTED] Capture Date: 12/20/2016
 Bank Number: 11900571 Check Number: 16867916

 USAA Garrison Property and Casualty Insurance Company PO Box 33490 San Antonio, TX 78265		0016867916 DATE 12/05/2016 CHECK AMOUNT \$**6,962.70
PAY **Six Thousand Nine Hundred Sixty-Two and 70/100 s**		
TO THE ORDER OF: ELIZABETH V FORTSON		
USAA # 018743005 / LR # 3 NATURE OF PAYMENT: Total Loss Payment under Collision Coverage, deductible has been waived. ELIZABETH V FORTSON, 2004 CADILLAC CTS 4D-FEDEX+ BANK OF AMERICA - HARTFORD, CT		
VOID 180 DAYS FROM ISSUE DATE		 AUTHORIZED SIGNATURE
#0016867916#		2240015665#

7336

12258829 021 0029 0290 20161219
 USAA FSB + SAT >>314074269<<
 >>314074269<<

Elizabeth V Fortson
 deposit only to USAA
 routing number

Electronic Endorsements:

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
12/19/2016	012258829	314074269	Rtn Loc/BOFD	Y		USAA FEDERAL SAVINGS
12/20/2016	009492157751	11300016	Pay Bank	N		
12/19/2016	3490465925	111900057	Pay Bank	N		JPMORGAN CHASE BANK,



www.diminishedvaluecheck.com

9716-B Rea Rd. #130 | Charlotte, NC 28277 | 704-464-2065 | jim@dvcheck.com

Umpire Report – Appraisal Clause

Date	08/26/2020
Vehicle Owner:	Elizabeth Fortson
Appraiser 1:	Brian Manning
Appraiser 2:	David Lucas
Vehicle:	2004 Cadillac CTS
VIN:	1G6DM577440177648
Date of Loss:	10/02/2016

Purpose of Appraisal

In accordance with your request, I have agreed to act as umpire in the determination of fair market value for the subject vehicle as of the 10/02/2016 loss.

The fair market value appraised by Brian Manning was \$8,300

The fair market value appraised by David Lucas was \$6,951

My findings are as follows:

This award does not include tax, title, license fees etc.

It is my determination as umpire that the 2004 Cadillac CTS owned by Elizabeth Fortson had a fair market value of \$7,800 on the 10/02/2016 date of loss.

08/26/2020

Jim Marshall CPCU, AIC, ASE
Owner, DVCHECK LLC



TAB 13

Garrison Property and Casualty Insurance
Company

DJA0146

YOUR UNCASHED USAA CHECK

ELIZABETH V FORTSON
201 S ELLIOTT RD APT 734
CHAPEL HILL NC 27514-5981

Please Cash Your Settlement Check

January 4, 2021

Dear Ms. Fortson,

The claim settlement check below hasn't cleared our bank. Please cash the check as soon as possible, or contact us within 60 days if you need a replacement check.

Payee:	ELIZABETH V FORTSON
USAA policyholder:	Elizabeth V Fortson
Claim number:	016743005-003
Check number:	029300600
Amount:	\$1,490.61
Date of issue:	September 2, 2020
Date of loss:	October 2, 2016
Loss location:	Raleigh

If you don't cash the check or contact us within 60 days from the date of this letter, we'll consider these funds unclaimed and begin the process to turn the funds over to the state as required by law.

For Questions or Help With Your Claim

If you have questions or need help with your claim, you can contact us quickly and easily:

- On usaa.com
- Using USAA's Mobile App
- By calling 210-531-8722 x35377

As always, we appreciate the opportunity to serve all your financial needs.

You may submit correspondence or questions to me. My contact information is:



Address:

USAA Claims Dept.
P.O. Box 33490
San Antonio, TX 78265



Fax:

1-800-531-8669

016743005 - 003 - 9034 - 61

127160-0818



Phone:

210-531-8722 x35377

Sincerely,

A handwritten signature in black ink, appearing to read "Alex Sammon".

Alexandra Sammon

Theft / Fire 8

Garrison Property and Casualty Insurance Company

Garrison Property and Casualty Insurance Company, a subsidiary of USAA Casualty Insurance Company, is authorized to use the USAA logo, a registered trademark of United Services Automobile Association.

TAB 14
DJA0148 - DJA0158

FILED UNDER
SEAL

TAB 15
DJA0159 - DJA0168

FILED UNDER
SEAL

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No. 1:19-CV-00294-CCE-JLW**

ELIZABETH V. FORTSON.)	
)	
Plaintiff,)	
)	
v.)	
)	Judge Catherine C. Eagles
GARRISON PROPERTY AND)	Magistrate Judge Joe L. Webster
CASUALTY INSURANCE COMPANY,)	
)	
Defendant.)	
)	

**DECLARATION OF GREGORY GOEBEL
IN SUPPORT OF GARRISON’S MOTION FOR SUMMARY JUDGMENT**

1. I, Gregory Goebel, am over 21 years of age, of sound mind, and otherwise competent to make this declaration.

2. I make this declaration as to matters of my own personal knowledge.

3. I have been retained by counsel for Garrison in this matter to provide opinions based on my experience in the automotive sales and service industry.

4. I offer this declaration in support of Garrison’s Motion for Summary Judgment. Many of the issues addressed in this declaration will also be addressed in detail in a forthcoming expert report, to be served by the deadline for expert disclosures in this matter.

5. I am a dealership consultant, trainer, publisher, and author in the retail auto industry – specializing in used vehicles and auto finance – and former owner and operator of three separate franchise auto dealership locations as well as four separate independent used vehicles sales locations.

6. I have over 40 years of experience in auto dealership sales and service operations, used vehicle remarketing, reconditioning, sales, valuation, and pricing.

7. My curriculum vitae, including a list of professional publications, and a description of my qualifications are appended to this declaration as Exhibit 1.

8. In my opinion, CCC's two-step condition adjustment methodology is directly in-line with auto industry practices.

9. It is consistently recognized in every facet of the auto industry that the condition of a motor vehicle plays a *significant* factor in determining its value and that a vehicle's value increases as its condition improves.

10. Vehicles advertised for sale at auto dealerships are generally in better condition than those being driven by private parties.

11. This is due both to the dealer's selection of better-than-average vehicles for retail sale and reconditioning steps dealers take to make those vehicles as desirable as possible.

12. Therefore, it is valid and appropriate to assume that vehicles listed for sale by dealerships are in "Dealer Ready" or "Very Good" condition.

13. Vehicles in everyday use by private parties suffer from wear and tear, requiring reconditioning before being listed for retail sale by dealers. Despite the extreme cosmetic care taken by a small percentage of motor vehicle owners, and the regular maintenance that is required to be (but not always) performed, normal wear takes place on every vehicle driven by private parties.

14. However, dealers are selective in choosing which used vehicles to retail.

15. The retail business of selling motor vehicles, whether at a franchise dealership or an independent pre-owned dealership, is extremely competitive. Often, consumers choose to purchase a vehicle from one dealer or another based on as little as a \$100 difference in sales

price. Similarly, the closer a used vehicle seems to being new – both in appearance and performance – often drives consumer decision making. Hence, dealers are extremely sensitive to the condition of the vehicles that sit for sale on their lots.

16. Dealers are selective in choosing which vehicles to remarket for retail sale, choosing those vehicles that tend to be in better condition than the broader population of vehicles in everyday use. According to vAuto,¹ one of the keys to success for dealers retailing used vehicles is to be selective in the vehicles they choose to retail. (*See Exhibit 2.*)

17. As a result, only approximately 25% of all vehicles traded into a motor vehicle dealer are retained for retail sale, as dealers are looking for only the best-of-the-best. Dealers use a very discerning eye when they appraise trade-ins or purchase vehicles at auctions or from private parties.

18. If dealers are not highly selective, they risk that the delta between (1) the cost to acquire the vehicle plus the cost of necessary reconditioning and (2) the ultimate sale price (after negotiation) will be insufficient to provide an adequate profit. As a result, dealers only sell at retail vehicles that are the highest quality of all those traded in or purchased.

19. Dealers also recondition used vehicles before retailing them. In my opinion, based on decades of experience and as confirmed by used vehicle industry data and sources, motor vehicle dealers go to great lengths to present the vehicles they offer for retail sale in the best condition possible, both cosmetically and mechanically. Consequently, the condition of vehicles at the time a dealer lists them for retail sale is a significant improvement over the condition that they were in at the time of trade in.

¹ vAuto is the largest and most authoritative resource used by auto dealers to stock and source retail inventory for sale. It offers education for retail dealers in both sourcing and making vehicles ready for sale. It is used by over 10,000 retail auto dealers.

20. The practice in the industry is for dealers to go through a specific process to inspect, service, and repair vehicles prior to offering them for retail sale. This is often referred to as “reconditioning.” The vehicle inspection and steps taken to recondition vehicles for retail resale are extensive, even on newer model vehicles with lower mileage. This was also noted by vAuto. (*See Exhibit 2.*)

21. Dealers go through this process, despite that it takes effort and costs money, because it improves the value of the vehicles and enables them to compete against other dealers.

22. Even vehicles that have been lightly used, properly serviced, and are nearly new go through this process so that it looks brand new and is in new or like-new mechanical condition.

23. Notably, dealers list their motor vehicles for sale on their websites, generally with a large number of photos. These photos show the physical condition of the vehicles inside and out and give dealers further incentive to ensure that the vehicles they list for retail sale are in better condition than otherwise similar vehicles in everyday use.

24. According to Patrick Manzi, the Chief Economist for NADA, at the end of 2020, the average cost to recondition a pre-owned automobile was \$951, while the average cost to recondition a truck was \$818, making the overall weighted average \$900. (*See Exhibit 3.*) This represents the amount of money that a dealer spends to make their vehicles “Very Good” or “Dealer Ready” before ever offering them for sale. This cost results in a retail value higher than the reconditioning and acquisition costs of the vehicle.

25. Consistent with this data, my extensive experience consulting for and training used motor vehicle dealers around the country further confirm that dealers spend significant time and money reconditioning used vehicles to improve their appearance and mechanical condition.

26. Dealers also sell Certified Pre-Owned (“CPO”) vehicles which are in like-new or “Excellent” condition. Approximately 7% of used vehicles sold in 2019 were manufacturer-supported CPO. (See Exhibit 4.) Approximately an additional 4% were third-party CPO, where the third parties are companies other than manufactures that manage their own CPO programs. These vehicles require extensive program-mandated mechanical and cosmetic reconditioning that ultimately extends the vehicle warranty to a term and milage that is sometimes much longer than the manufacture’s original new vehicle warranty.

27. Dealers also sell vehicles that are not CPO, but that are nonetheless in exceptional condition. Vehicles may also have one or more component groups in like-new or “Exceptional” condition, even while the rest of the vehicle is otherwise in Dealer Ready or Very Good condition. For example, a vehicle may have a brand-new set of tires put on it, or a new windshield installed, during the reconditioning process.

28. 



29. It is standard within the used car industry for dealers to look at the retail price other dealers are asking for a car of the same make, model, and year, with similar mileage and options, to assist in valuing a car for trade in and to determine at what retail price to list a vehicle. In doing so, it is customary in the industry for a dealer to assume that vehicles listed for retail sale at other used car dealers have been fully reconditioned, and that such reconditioning is

reflected in the listed retail price. This is because it is standard industry practice to recondition used vehicles prior to listing them for retail sale and because it is impossible to physically inspect every vehicle being used for comparison purposes – neither time would allow it nor the fact that it would require a competing dealer to reveal their proprietary practices and internal pricing and margins. This is also true not only of retail auto dealers, but of used car value guides such as NADA and Kelly Blue Book.

30. Finally, using retail list prices overvalues vehicles. Retail *list* prices are typically higher than transaction prices, because list prices are typically set with room for discounts during negotiation, which occurs in the majority of transactions, and can represent thousands of dollars, depending on the vehicle, with both older and less expensive vehicles as well as newer or more expensive vehicles tending to have more negotiation room relative to their final sale prices than the more common or popular vehicles.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21st day of July, 2021, in Sarasota, FL.



Gregory Goebel

EXHIBIT 1

GREG GOEBEL

118 N. Warbler Lane, Sarasota, FL 34236 | (941) 685-9629 | Greg@DealerStrong.com

SUMMARY

Highly experienced automotive retail and finance professional who has owned and operated businesses in the automotive sector since 1979. Experience includes owning franchise and independent automobile dealerships in multiple states, franchised automotive repair facilities, a multi-state mortgage brokerage operation, two business-to-business trade publications in the retail automotive industry and auto finance industry, and a training, consulting and marketing company supporting automotive dealers and auto finance companies. Highly focused on sourcing, reconditioning, and retailing pre-owned vehicles. Has served as a professional moderator of dealer-peer consulting groups (20-groups) for over 17 years, and has significant experience as a top level testifying-expert witness in automotive civil and criminal cases as it pertains to dealership sales, service, and finance operations, as well as dealer-controlled finance operations, also known as “Buy-Here Pay-Here.” His passion is data analysis and strategy, combined with sales and marketing.

EDUCATION**Wharton School of Business**

Post-Graduate Work	1984
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Purdue University

BSIM: Finance and Marketing	1976
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EMPLOYMENT

<i>Used Car University, LLC dba DealerStrong, Evansville, IN</i>	2002-Present
--	--------------

President, CEO and Moderator

Working with retail automotive dealers to provide training and consulting services with a focus on specialty finance, operations, and marketing in the auto dealership. Mr. Goebel also moderates dealer performance consulting groups. These groups consist of dealers with a high focus on pre-owned vehicles, involving virtual meetings ten times per year and two to three in-person meetings annually.

Mr. Goebel also consults with and trains many specialty auto finance companies and their personnel on a regular basis and has trained many industry vendors to understand the intricacies of specialty finance. He has created the largest proprietary database with transactional data and benchmarks for the specialty finance industry.

The company additionally provides services in:

- Used vehicle valuation, sourcing, reconditioning, marketing, and sales.
- Subprime auto finance.
- Dealership accounting and forensic analysis.
- Human resources and staffing.
- Leadership development.
- Variable operations management and internal training program development.
- Fixed operations management and internal training program development.
- Compliance with federal and state regulations for operations.

Clients include:

- Franchise auto dealership and automotive groups.
- Independent retail dealerships, including multi-store operations.
- Non-captive auto finance companies (not owned by auto manufacturers).
- Industry trade shows and conferences where Goebel has been featured as a key-note and presenter regularly since 2002.

NCM Associates

2008-Present

Contract Moderator

Mr. Goebel moderates two 20 groups of high-volume retail auto dealers who meet three times a year in various locations as well as consulting with them throughout the year.

Auto Dealer Monthly

2002-2012

President and CEO

Auto Dealer Monthly was created as an online based idea exchange platform for retail auto dealers and grew to include:

- Auto Dealer Monthly magazine, a publication serving more than 30,000 franchise and independent auto dealers in the United States and Canada, served as the publisher. Sold in 2012 to Bobit Business Media
- Special Finance Magazine, served as publisher
- Special Finance Conference/Convention, served as chairman. Sold to Bobit Business Media in 2013.
- AutoDealerPeople.com, served as creator and publisher

Leedom and Associates

2002-2005

oderator, Partner, and Vice-President

While serving as a moderator of multiple groups, Mr. Goebel was instrumental in developing several groups including high-line, specialty finance and service only groups and multiple independent dealer groups.

Auto Choice Hyundai, Auto Choice America, Top Techs Auto Center, Greg Goebel Buick, Pontiac, GMC

Dealer Principal

1984-2002

Mr. Goebel oversaw the day to day operations of multiple full-service dealerships located in multiple states and a stand-alone service center. Developed the first specialty finance operation in his market area in 1990 and delivered more than 11,000 subprime auto deals. Stores have included franchise operations, independent dealerships and one buy-here pay-here operation.

Mortgage America

1997-2000

Owner and CEO

Oversaw the operations of a multi-state mortgage company focused on the financing of residential property, both acquisition and refinance.

Precision Transmission

1979-1986

Owner

Operated a chain of 6 services facilities in Southwest Indiana and Northwest Kentucky, eventually becoming an area franchisor covering three states.

PUBLICATIONS AND PAPERS

"Complete Guide to Special Finance including the Ten Critical Components for Success"

Author of the only authoritative published book on Specialty Finance 2008

Ward's Dealer Business Magazine

Contributing Special Finance expert

World of Special Finance Magazine

Monthly contributing Special Finance expert

Dealer Magazine

Contributing Special Finance expert

Used Car Dealer Magazine

Contributing Special Finance expert

Auto Dealer Monthly Magazine

Monthly contributing Special Finance expert

Special Finance Magazine

Monthly contributing Special Finance expert

SPEAKING EXPERIENCE

Industry Summit (Ten Years)

Industry Trends in Special Finance

Annual keynote speaker addressing shifts, trends, and forecast for the Subprime/Special Finance market

ASTN Network Trainer

Subject: Special Finance

Numerous guest speaker and panelist spots throughout industry conference and conventions events as well as a guest speaker for several NADA and NCM 20 groups, with a heavy emphasis on specialty finance.

OTHER RELATED EXPERIENCE

Expert Witness 1986 - present
Provide expert data analysis, summaries and testimony

BOARD POSITIONS & AWARDS

National Independent Automobile Dealers Association – OFFICER 1996-2000
Served on the Executive Committee of from 1996-2000, during that time developed the 20-group program for independent auto dealers.

ADVISORY BOARD POSITIONS

Pontiac Motor Division
GMC Truck Division
Household Automotive Finance
Hyundai Motor America

PAID BOARD POSITIONS

National Auto Credit
Universal Underwriters Acceptance Corporation
Dwell Green, LLC

BUSINESS RECOGNITION

Indiana Quality Dealer of the Year 1994
Awarded by the National Independent Auto Dealers Association

Special Finance Hall of Fame 2013
Awarded by Special Finance Magazine

Dealers' Choice Awards 2016 & 2017
Diamond Award – Top Special Finance Trainer in Auto Industry

COMMUNITY INVOLVEMENT

Race Director 2011 & 2012
Marathon of Sarasota – founder and director of race

Underprivileged Families Holidays Benefit 1979 - 2017
Chair and co-chair of annual benefit for the needy

Director/President/Chairman
Many charitable, local benefit or sporting organizations 1979 - 2013

PUBLICATIONS AUTHORED IN IN THE PREVIOUS TEN YEARS

The publications I have authored or contributed to in the previous ten years can be found at the following websites:

<https://www.autodealertodaymagazine.com/search/?q=greg+goebel&page=24>

<https://www.autodealertodaymagazine.com/authors/307558/greg-goebel>

<http://www.dealerstrong.com/author/gregdealerstrong-com/>

[illegible]

ARTICLES

SEVEN RULES TO RECONDITION USED VEHICLES "RIGHT" EVERY TIME

NEED SOME HELP?

I like the way the Paul Lynch, general sales manager of DePaula Chevrolet in Albany, New York, thinks about used vehicle reconditioning.

"It's just as important in terms of gross profit as working the deal in the front of the store," Lynch said. "I know that may sound crazy, but I really believe it. The faster you can get those cars to the front line with the right amount of reconditioning, the more actual time you've got to make the biggest gross you can make."

This emphasis on the importance of reconditioning vehicles "right" has led Lynch to audit and re-examine the reconditioning processes at his dealership. This examination came even though Lynch and his team were anything but slouches when it comes to reconditioning and retailing used cars. In the past year, they've successfully trimmed the recon-to-front-line times to an average of three days, while doubling the dealership's monthly used vehicle sales volumes to 130 units a month.

Still, Lynch believes "there's more gross to be made" if he and his team can make used vehicle reconditioning even more cost-effective and efficient. The following are "Seven Rules For Used Vehicle Reconditioning" that Lynch and his team developed after a top-to-bottom review of what's working and isn't.

Rule 1: Make Speed and Quality Your Chief Strategic Objectives

For Lynch, these dual objectives provide the basis for evaluating every aspect of his [reconditioning processes](#) and decision-making. "You ask yourself,

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Rule 2: Show How Individuals Contribute to Your Key Objectives

The dealership has a dedicated reconditioning team that includes a writer, technicians, detailers and photographers. Team members excelled at their respective tasks, but the group lacked a broader understanding of how their work affects the outcome on every car. "I broke it down and showed them what it costs us in gross profit if we lose a day in recon on a single car," Lynch said. "Once you have that conversation, you can get them to see the light, and they have a greater amount of pride in their work because they're contributing to something bigger than their own paycheck."

Rule 3: Change Payplans to Match Your Goals

Lynch has moved from a flat-rate pay plan to a team-style approach to help focus reconditioning technicians and detailers on the need for speed. The program pools all repair order (RO) hours and pays individuals based on their contribution to the total — a move Lynch believes will spur more collaboration and create a disincentive to load an RO with unnecessary items that only benefit an individual's compensation plan. "When everyone knows we all make more money by speeding things up, you'll see things like the tech taking a car right off the lift and driving it down to the detail bay," he said. "You can't be fast if you're putting fluff on the RO."

Rule 4: Get Better Cars

NEED SOME HELP?

"marketready," unless there's a compelling reason for an exception. "It's tough," he said. "But you've got to be [buying good cars](#) — late model, low mileage and good condition — to offset the older cars with higher miles that will need more recon work."

Rule 5: Scrutinize Estimated-to-Actual Recon Costs

Lynch and his managers meet daily to compare appraiser estimates of reconditioning costs to recommended work. "If we made a mistake with a purchased vehicle, and it needs significantly more than we expected or estimated, we must not make a second mistake and approve a much higher recon bill if the numbers don't leave us a desirable initial sale profit," he said. "When this happens, the car goes directly to wholesale and we must accept that we made the mistake and move on without it costing us more money." Here's a benchmark: If the actual reconditioning costs exceed the estimate by more than 20 percent, I recommend wholesaling the vehicle to apply the investment in another unit with better gross profit potential.

Rule 6: Work to Lower Recon Costs Without Sacrificing Quality

The store currently averages about \$1,110 in reconditioning costs, a figure Lynch wants to trim by 20 percent to 30 percent. To reach the goal, his team now questions whether factory replacement parts/ tires, body repairs, third-party dent/window/upholstery work is always necessary — and, if it is, to negotiate for the lowest-possible cost. He also monitors policy expense to make sure

NEED SOME HELP?

Rule 7: Reward the Higher Level of Collaboration and Trust Between Used Vehicles and Service

Lynch understands the “tug of war for gross profit” that often occurs between the service and used vehicle departments over reconditioning. To address this risk, he has created a monthly bonus plan, paid for by the used vehicle and service departments, to reward the reconditioning team when they meet their new benchmarks for reconditioning cost, speed and quality.

I think Lynch’s rules are relevant for all dealers. In addition, his appetite for continuous improvement is a model other dealers would do well to emulate: “If you keep pushing the envelope in every single area,” Lynch said, “you’re going to get better results. You simply can’t get better results if you keep doing what you’re doing.”



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COX AUTOMOTIVE

NEED SOME HELP?

Greg Goebel

From: email, economics <economics@NADA.org>
Sent: Friday, April 23, 2021 14:45
To: Greg Goebel
Subject: RE: Data to support reconditioning costs

Hi Greg,

All is well and I hope the same for you.

For 2020, the average cost to recondition a car was \$951 and the average cost to recondition a truck was \$818. The overall average for reconditioning a used vehicle was \$900.

Thanks,

Patrick Manzi
Chief Economist
National Automobile Dealers Association

pmanzi@nada.org

o 703.821.7293

8484 Westpark Drive

Suite 500

Tysons, VA 22102

nada.org



From: Greg Goebel <greg@dealerstrong.com>
Sent: Monday, April 19, 2021 4:14 PM
To: email, economics <economics@NADA.org>
Subject: RE: Data to support reconditioning costs

CAUTION: External email.

Hi, Patrick!

I hope all is well with you. I am writing to see if you have the same data available yet for used auto and used truck reconditioning for 2020, yet? If so, is it possible to share it with me again? Thanks so much!

Best regards,
GG

Greg Goebel, CEO

DEALERSTRONG

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O – (877) 811-8107
F – (888) 386-2236
C – (941) 685-9629

Commitment: Doing what you said when you meant it long after the feeling has gone away.

From: email, economics <economics@NADA.org>
Sent: Wednesday, May 20, 2020 11:19 AM
To: Greg Goebel <greg@dealerstrong.com>
Subject: RE: Data to support reconditioning costs

Hi Greg,

I do have an average number for this. As of year-end 2019, the average cost to recondition a car was \$1,060 and the average cost to recondition a truck was \$1,280. The overall average for reconditioning a used vehicle was \$1,127.

Thanks,

Patrick Manzi
Chief Economist
National Automobile Dealers Association

pmanzi@nada.org
o 703.821.7293
8484 Westpark Drive
Suite 500
Tysons, VA 22102
nada.org



From: Greg Goebel <greg@dealerstrong.com>
Sent: Tuesday, May 19, 2020 2:56 PM
To: email, economics <economics@NADA.org>
Subject: Data to support reconditioning costs

Patrick,

I have been referred to you by someone in your Dealership Operations office. I have been retained as an expert witness in litigation where I am needing to support the fact that pre-owned vehicles being offered for sale by a dealer are, on average, in better condition than comparable vehicles being driven on the streets by private parties.

As an 18 year former dealer, a longtime member of a NADA 20 group, a frequent speaker at NADA 20 groups, and the leader in a continuing education project on Special Finance about a decade ago, I personally have all the data that I need to support this, however, my name and company does not carry the recognition or clout that the National Automobile Dealer Association would have to a person on a jury that has no inside knowledge of the industry. My own company

indeed has all the transactional data from millions of transactions, and indeed the exact information I am need, but, to someone outside the industry, it would mean little for validation. Hence, I am looking to buy the info that I know NADA has.

It would not need to be identified by dealer or even state, just as an average cost of reconditioning by auto or truck. Is that something that you would be able to offer? Thank you for your consideration.

Best regards,
GG

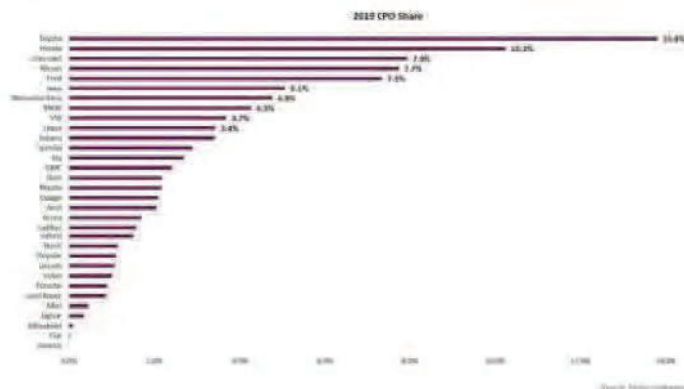
[CLICK HERE TO SCHEDULE TIME WITH ME](#)



Commitment: *“Doing what you said you would when you meant it, long after the feeling you had when you said it has gone away.”*

Given their younger age, CPO vehicles are likely equipped with highly desired technology such as blind-spot monitors, Bluetooth, navigation and backup cameras. And because SUVs and crossovers have been popular with new-vehicle buyers for the past several years, there are more of them coming back off lease and available for certification.

The CPO market remains top-heavy with a few brands accounting for the majority of sales. Toyota, Honda and Chevy continue to be the biggest players in the CPO market, collectively representing almost a third of all CPO sales. Those three plus Ford and Nissan accounted for 47% of CPO sales in 2019, reflecting that more brands increased CPO sales. In 2018, Toyota, Honda, Chevy and Nissan accounted for 48% of the total industry CPO sales.



In 2020, a headwind to CPO units will be incentives on new vehicles. Cox Automotive Rates & Incentives reported that 2019 was a **record year for new-vehicle incentives** – both in terms of volume and percentage of average transaction price. At the same time, favorable supply and demand for used retail units will continue to provide strong tailwinds to the CPO market. The Cox Automotive 2020 CPO sales forecast is 2.80 million units.

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Used-vehicle sales continue to recover, but an analysis of used-vehicle inventory data from @vAutotnc tells the story. bit.ly/3fSNXAq



Retail Used-Vehicle Supply Slumps to Ne...
Strong demand for used vehicles has cause...
coxautoinc.com



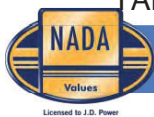
Jul 22, 2020



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Vehicle Information

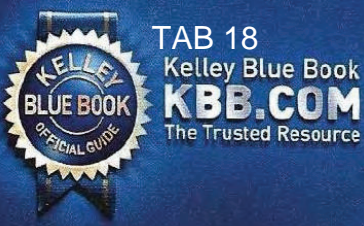
Vehicle: 2004 Cadillac CTS Sedan 4D 3.6L V6
Region: Southeastern
Period: October 7, 2016
VIN: 1G6DM577440177648
Mileage: 82,000
Base MSRP: \$31,840
Typically Equipped MSRP: N/A
Weight: 3,694



NADA Used Cars/Trucks Values

Auction*	Base	Mileage Adj.	Option Adj.	Adjusted Value
Low	N/A	N/A	N/A	N/A
Average	N/A	N/A	N/A	N/A
High	N/A	N/A	N/A	N/A
Trade-In				
Rough	\$1,450	\$1,650	N/A	\$3,100
Average	\$2,450	\$1,650	N/A	\$4,100
Clean	\$3,300	\$1,650	N/A	\$4,950
Clean Loan	\$2,975	\$1,650	N/A	\$4,625
Clean Retail	\$5,300	\$1,650	N/A	\$6,950

*The auction values displayed include typical equipment and adjustments for mileage and any of the following applicable accessories: engine size, drivetrain, and trim.



DJA0192

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Fax: (949) 727-3400

www.kbb.com

July 12, 2019

Steve Leface
1050 Connecticut Ave NW #1100
Washington, DC 20036

Thank you for your Kelley Blue Book Certified Value request.

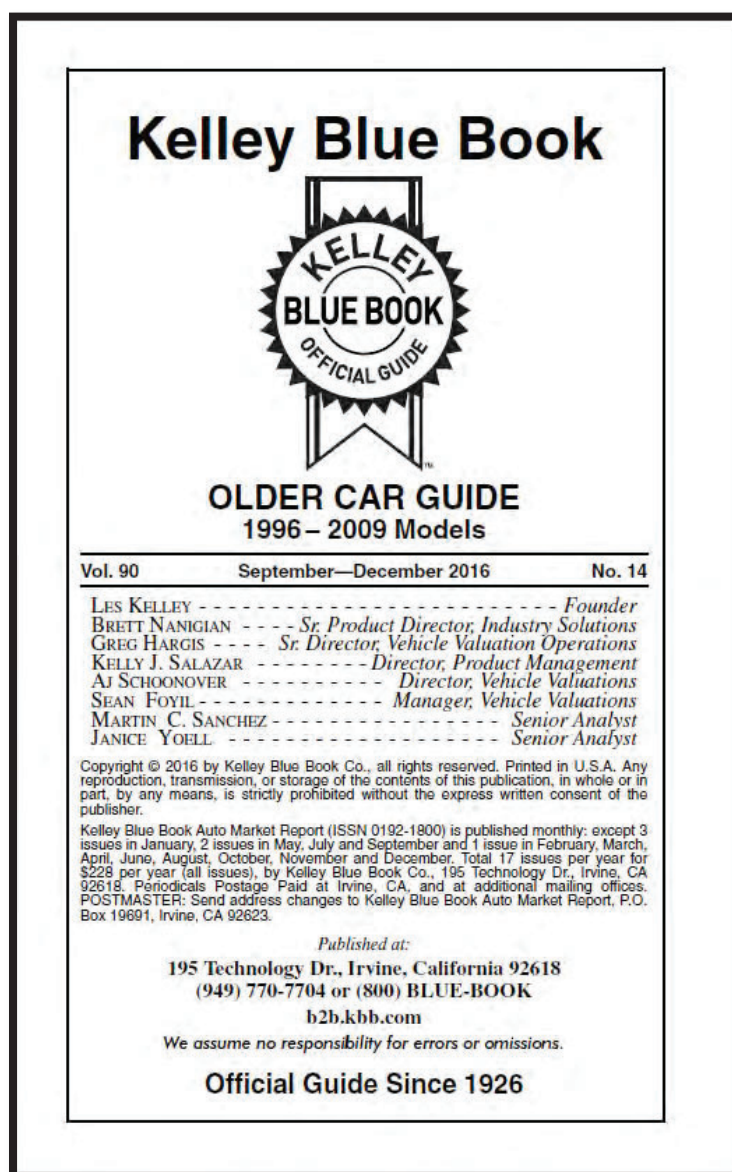
Per your request, included is a certified copy of the relevant pages of the September – December 2016 Eastern Edition Kelley Blue Book Official Guide for Older Cars for a 2004 Cadillac CTS.

Please contact me with any questions you may have regarding this certified value.

Thank you.

Regards,

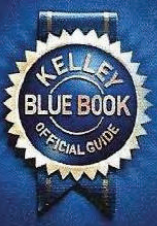
Chris Beckelman
(800) 258 - 2005



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I certify that this is a true and correct copy of the pages from the September – December 2016 Eastern Edition, *Kelley Blue Book Official Guide for Older Cars* for a 2004 Cadillac CTS, per your request.

Sincerely,
Chris Beckelman
KELLEY BLUE BOOK



INFORMATION AND EXPLANATION

These values are the opinion of the staff and management of Kelley Blue Book and are arrived at after careful study of information we deem reliable. However, we assume no responsibility for errors or omissions.

LIST PRICES represent the original suggested retail price (including destination charges) for vehicles equipped as indicated on the equipment chart.

AUCTION VALUE is what a vehicle is expected to sell for at a wholesale auction. The Auction Value assumes the seller has properly disclosed the condition of the vehicle. It does not include buyer's fees or the buyer's transportation costs and assumes the vehicle has not yet been fully reconditioned, inspected and prepared for retail sale.

LENDING VALUE is a trusted benchmark value for wholesale and retail lenders. Based on Kelley Blue Book's Auction Value, the Lending Value assumes that the vehicle is in good to excellent condition, fully reconditioned, inspected and prepared for retail sale.

SUGGESTED RETAIL VALUE represents dealers' asking price and is the starting point for negotiation. This value assumes that the vehicle has been fully reconditioned and has a clean Title history.

EQUIPMENT SCHEDULES are provided for cars on pgs. 9 through 19 and for trucks/vans on pgs. 394 through 395. To the right of each model heading is the schedule that particular model should use. Base prices for all models include the equipment as indicated by asterisks on the equipment charts plus AM/FM. Any equipment following a model listing will supersede equipment listed on a chart.

Values to be deducted are enclosed in parenthesis.

Add or subtract for each item that is listed separately **even if it is part of a package** you have already added for or if it is **original standard equipment**.

Premium Sound refers to a complete upgraded sound system (i.e. Bose, JBL, Infinity) not simply speakers or an equalizer.

Premium Wheels are a special or upgraded set of wheels, not just a set of alloy wheels. This would be used for custom, designer or chromed alloy wheels. Add for either but not both.

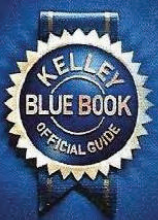
Navigation System applies to a built-in dashboard or console-mounted global positioning system.

Rear Spoiler (factory type) bolt-on trunk-mounted spoilers. It does not apply to "Lip-Spoilers" that are merely a raised contour in the trunk lid.

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Sincerely,
Chris Beckelman
KELLEY BLUE BOOK



INFORMATION AND EXPLANATION

RETAIL MARK-UP FOR EQUIPMENT is as follows:

W/S	RTL	W/S	RTL	W/S	RTL	W/S	RTL	W/S	RTL
25	35	225	300	425	565	625	835	825	1100
50	65	250	335	450	600	650	865	850	1135
75	100	275	365	475	635	675	900	875	1165
100	135	300	400	500	665	700	935	900	1200
125	165	325	435	525	700	725	965	925	1235
150	200	350	465	550	735	750	1000	950	1265
175	235	375	500	575	765	775	1035	975	1300
200	265	400	535	600	800	800	1065	1000	1335

MILEAGE ADJUSTMENT SCHEDULES appear on pages 8 through 34. These give an amount to be added or deducted from the wholesale and retail values for what we consider to be low or excess mileage. The mileage charts are not established by average miles driven per year. Instead the charts reflect acceptable mileage as demonstrated by the market. **The mileage adjustment is the same for wholesale and suggested retail.**

Use the base lending value (excluding equipment) to determine which column on the chart to use. Disregard the rightmost three digits of the vehicle's mileage when determining the adjustment. The rightmost column gives percentages, instead of dollar amounts, for higher priced vehicles. The percentages should be applied to the base wholesale book value (excluding equipment). The result should be rounded to the nearest \$25.

Regardless of the amount of equipment or mileage adjustments, the wholesale and retail values should not be reduced below 50% of the base values.

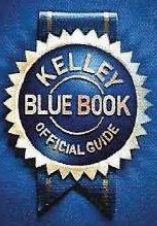
CONDITION is of prime importance! Remember the lending value in the guide refers to a clean vehicle ready for resale. Appropriate amounts should be deducted for any needed reconditioning. Likewise, appropriate amounts should be added for exceptionally clean vehicles, vehicles with extremely low miles and vehicles which are under warranty by the factory or dealer.

Vehicles that have been **completely restored** are worth a great deal more than the values shown in this guide. This publication makes no attempt to value these vehicles.

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Sincerely,
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INFORMATION AND EXPLANATION

VIN is the Vehicle Identification Number. The VIN may vary depending on model, engine, transmission and option packages.

W.B. refers to the wheelbase which is the distance, center to center, from the front axle to rear axle.

Weight is the approximate curb weight of the vehicle.

Liter refers to engine displacement in liters.

Cab & Chassis is an incomplete vehicle, with completed occupant compartment that requires the addition of the cargo carrying components.

DR is an abbreviation for Dual Rear Wheels.

Pickups listed in this guide are Flareside, Stepside, Fleetside, or Styleside pickup trucks. Fleetside and Styleside trucks both have straight bed sides with the fender wells located inside the pickup bed. Flareside and Stepside trucks both have straight inner bed walls with the fenders located on the outside of the bed sides. Value adjustments to Stepside and Flareside trucks can be found on the truck equipment schedules.

Custom Bumpers (Truck Equipment Schedules): Bumpers are considered standard equipment on all trucks in this guide. The custom bumper add should be used only for an upgraded bumper such as a tubular or premium bumper.

Video/DVD System: This add refers to a video-cassette, DVD or game player that has TVs or monitors permanently mounted to the floor, ceiling or headrest.

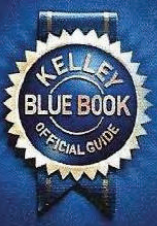
Asterisks (**)** may appear in place of values on certain vehicles where due to rarity in the marketplace or extreme special interest we can not yet provide accurate auction or lending values. Some of these vehicles may be limited production or rarely traded-in. We have included retail values for these vehicles but asterisks appear in place of the auction and lending values.

Grey Market Cars (cars imported through sources other than factory authorized distributors) may have substantially lower used values.

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KELLEY BLUE BOOK OLDER CAR GUIDE REGIONS

WESTERN EDITION

Alaska	Hawaii	Oregon
Arizona	Idaho	Utah
California	Montana	Washington
Colorado	Nevada	Wyoming
Guam	New Mexico	

CENTRAL/EASTERN EDITION

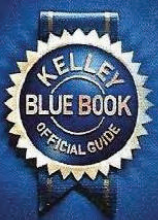
Alabama	Maryland	Oklahoma
Arkansas	Massachusetts	Pennsylvania
Connecticut	Michigan	Puerto Rico
Delaware	Minnesota	Rhode Island
District of Columbia	Mississippi	South Carolina
Florida	Missouri	South Dakota
Georgia	Nebraska	Tennessee
Illinois	New Hampshire	Texas
Indiana	New Jersey	Vermont
Iowa	New York	Virgin Islands
Kansas	North Carolina	Virginia
Kentucky	North Dakota	West Virginia
Louisiana	Ohio	Wisconsin
Maine		

7

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Sincerely,
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2003 CADILLAC

Body Type	VIN	Wt.	List	Auction		Lending	Sug. Retail
				Good	Very Good		
SLS Sedan 4D.....	KS54Y	3969	45270	825	900	1125	2625
STS Touring Sedan 4D, KY549	3992	51175		650	725	875	3125
DeVILLE—V8—Equipment Schedule 2							
W.B. 115.3"; 4.6 Liter.							
Sedan 4D.....	KD54Y	3978	43995	975	1100	1325	3050
DHS Sedan 4D.....	KE54Y	4049	48825	1075	1225	1450	3800
DTS Sedan 4D.....	KF549	4047	48825	1000	1150	1375	4125
2004 CADILLAC — 1G6(DM57N)—4—#							
CTS—V6—Equipment Schedule 2							
W.B. 113.4"; 3.2 Liter.							
Sedan 4D.....	DM57N	3509	33155	1800	2000	2225	4750
Luxury Sport Pkg.....				275	275	275	370
V6, 3.6 Liter.....	7			425	425	425	560
CTS—V—V8—Equipment Schedule 2							
W.B. 113.4"; 5.7 Liter.							
Sedan 4D.....	DN57S	3850	49995	8025	8850	9150	11900
SEVILLE—V8—Equipment Schedule 2							
W.B. 112.2"; 4.6 Liter.							
SLS Sedan 4D.....	KS52Y	3969	47955	1025	1125	1350	3800
DEVILLE—V8—Equipment Schedule 2							
W.B. 115.3"; 4.6 Liter.							
Sedan 4D.....	KD54Y	3978	45445	1125	1275	1500	3700
DHS Sedan 4D.....	KE54Y	4049	50595	1150	1300	1525	4050
DTS Sedan 4D.....	KF549	4047	50595	1100	1250	1475	4200
XLR—V8—Equipment Schedule 1							
W.B. 105.7"; 4.6 Liter.							
Hardtop Conv 2D.....	YV34A	3647	76200	8450	8875	9275	13600
2005 CADILLAC — 1G6(DM56T)—5—#							
CTS—V6—Equipment Schedule 2							
W.B. 113.4"; 2.8 Liter.							
Sedan 4D.....	DM56T	3509	33595	2100	2350	2725	5300
Luxury Pkg.....				300	300	300	400
V6, 3.6 Liter.....	7			450	450	450	595
CTS—V—V8—Equipment Schedule 2							
W.B. 113.4"; 5.7 Liter.							
Sedan 4D.....	DN56S	3850	49995	8650	9500	9950	12700
STS—V6—Equipment Schedule 2							
W.B. 116.6"; 3.6 Liter.							
Sedan 4D.....	DW677	3960	40995	2300	2525	2900	5375
Adaptive Cruise Control.....				275	275	275	355
AWD.....				1250	1250	1250	1680
V8, 4.6 Liter.....	A			550	550	550	725
DEVILLE—V8—Equipment Schedule 2							
W.B. 115.3"; 4.6 Liter.							
Sedan 4D.....	KD54Y	3978	46490	1300	1475	1850	3875
DHS Sedan 4D.....	KE54Y	4049	52045	1325	1475	1850	4800
DTS Sedan 4D.....	KF549	4047	52045	1775	1975	2350	5075
XLR—V8—Equipment Schedule 1							
W.B. 105.7"; 4.6 Liter.							
Hardtop Conv 2D.....	YV34A	3647	76650	11400	12000	12550	16950
2006 CADILLAC — 1G6(DM57T)—6—#							
CTS—V6—Equipment Schedule 2							
W.B. 113.4"; 2.8 Liter.							

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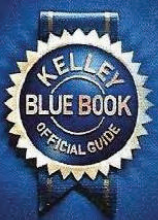
See Pages 4-5 for Value Definitions

09168

To Whom It May Concern:

I certify that this is a true and correct copy of the pages from the September – December 2016 Eastern Edition, *Kelley Blue Book Official Guide for Older Cars* for a 2004 Cadillac CTS, per your request.

Sincerely,
Chris Beckelman
KELLEY BLUE BOOK



2004 MILEAGE CHART

Miles x 1000	BASE LENDING BLUE BOOK DOLLAR VALUE							
	\$0- 1000	1001- 1500	1501- 2000	2001- 2500	2501- 3000	3001- 3500	3501- 4500	4501 & up
63	675	1125	1575	2025	2475	2925	3600	89.9%
73	575	975	1350	1750	2125	2525	3100	77.7%
82	500	825	1175	1500	1825	2150	2650	66.5%
90	425	700	1000	1275	1575	1850	2275	57.0%
97	375	625	850	1100	1350	1600	1975	49.2%
103	325	525	725	950	1150	1375	1675	41.9%
108	275	450	650	825	1000	1175	1450	36.5%
113	225	400	550	700	850	1000	1250	31.0%
118	200	325	450	600	725	850	1050	26.4%
122	175	275	400	500	625	725	900	22.4%
128	150	225	325	425	525	600	750	18.7%
129	125	200	275	350	450	525	650	15.9%
132	75	150	200	250	325	375	450	11.5%
134	75	100	150	200	250	275	350	8.7%
136	50	75	100	150	175	200	250	6.1%
137	25	50	75	100	125	150	200	4.9%
138	25	50	75	75	100	125	150	3.7%
139	25	25	50	50	75	75	100	2.7%
140	25	25	25	50	50	50	75	1.8%
141	0	25	25	25	25	25	50	1.1%
143	0	0	0	0	0	0	0	0.0%
145	0	25	25	25	25	25	50	1.0%
147	25	25	25	50	50	75	75	1.9%
149	25	25	50	75	75	100	100	2.8%
151	25	50	75	75	100	125	150	3.6%
153	25	50	75	100	125	150	175	4.3%
155	25	50	75	100	125	150	200	5.0%
158	50	75	100	125	150	200	225	5.9%
161	50	75	125	150	175	225	275	6.7%
165	50	100	125	175	200	250	300	7.6%
170	75	100	150	200	225	275	350	8.6%
176	75	125	175	225	250	300	375	9.5%
183	75	125	175	225	275	325	425	10.4%
191	75	150	200	250	300	350	450	11.1%
205	100	150	200	275	325	375	475	11.9%

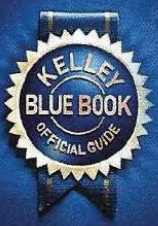
24

ADD figures in shaded areas. DEDUCT figures in white areas

To Whom It May Concern:

I certify that this is a true and correct copy of the pages from the September – December 2016 Eastern Edition, *Kelley Blue Book Official Guide for Older Cars* for a 2004 Cadillac CTS, per your request.

Sincerely,
Chris Beckelman
KELLEY BLUE BOOK



2004 LENDING FACTORY EQUIPMENT

Equipment	1	2	3	4	5	6
Premium Sound_____	25	25	50	50	25	25
Navigation System_____	65	120	120	125	125	125
Leather_____	*	*	130	100	125	90
Rear Spoiler_____	25	25	25	25	25	25
Parking Sensors_____	90	65	55	—	—	—
Alloy Wheels_____	*	*	45	45	25	25
Premium Wheels_____	120	120	130	130	50	25
Premium Whls 19"+_____	115	115	115	115	115	115
Roof Rack (Wagon)_____	25	25	25	25	25	25
Third Seat (Wagon)_____	140	65	65	65	50	50
DEDUCT FOR:						
w/o ABS_____	—	—	(50)	(50)	(25)	(25)
w/o Power Windows_____	—	—	—	—	(25)	(25)
w/o Power Locks_____	—	—	—	—	(25)	(25)
w/o Tilt Wheel_____	—	—	—	—	(25)	(25)
w/o Leather_____	(100)	(100)	—	—	—	—

* — EQUIPMENT INCLUDED IN BASE PRICE

SEE PAGE 5 FOR EQUIPMENT RETAIL

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To Whom It May Concern:

I certify that this is a true and correct copy of the pages from the September – December 2016 Eastern Edition, *Kelley Blue Book Official Guide for Older Cars* for a 2004 Cadillac CTS, per your request.

Sincerely,
Chris Beckelman
KELLEY BLUE BOOK

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No. 1:19-cv-294-CCE-JLW

ELIZABETH V. FORTSON.)	
)	
Plaintiff,)	
)	
v.)	Judge Catherine C. Eagles
)	Magistrate Judge Joe L.
GARRISON PROPERTY AND CASUALTY)	Webster
INSURANCE COMPANY,)	
)	
Defendant.)	
)	

**PLAINTIFF'S RESPONSES TO DEFENDANT GARRISON PROPERTY AND
CASUALTY INSURANCE COMPANY'S FIRST SET OF INTERROGATORIES,
REQUESTS FOR ADMISSION, AND REQUESTS FOR PRODUCTION OF
DOCUMENTS**

GENERAL OBJECTIONS

Plaintiff incorporates the following General Objections into each Answer below:

Plaintiff objects to the "Instructions" and "Definitions" contained in Garrison's First Set of Interrogatories, Requests for Admission, and Requests for Production of Documents to Plaintiff to the extent they attempt to impose on Plaintiff requirements beyond those set forth in the Federal Rules of Civil Procedure. Plaintiff interpreted Defendant's words and phrases in accordance with their usual definitions and usages when responding to Defendant's requests. If Defendant intended any word or phrase to have a different meaning other than the generally accepted one, Plaintiff objects on the grounds that the request is vague and ambiguous.

Plaintiff's responses as set forth herein are based upon information presently known. Plaintiff reserves the right to rely on facts, documents, or other evidence that may develop or subsequently come to the attention of Plaintiff, in order to assert

additional objections or supplement responses if additional information or grounds for objections are discovered. Plaintiff reserves the right to supplement or amend these responses at any time in accordance with the applicable rules and orders of the Court.

Finally, Plaintiff reserves all objections to the admissibility at trial of any documents or information produced to Defendant.

I. REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1: Admit that Garrison provided You with a copy of the CCC Report on October 17, 2016.

ANSWER:

Admitted.

REQUEST FOR ADMISSION NO. 2: Admit that Garrison provided your father with a copy of the CCC Report on October 17, 2016.

ANSWER:

Admitted.

REQUEST FOR ADMISSION NO. 3: Admit that a Garrison representative discussed the CCC Report with your father.

ANSWER:

Plaintiff lacks sufficient information to admit or deny this Request, therefore, this Request is denied.

REQUEST FOR ADMISSION NO. 4: Admit that the CCC Report explained that the valuation for your Vehicle was calculated using comparable vehicles, which included applying a condition adjustment to those comparable vehicles.

ANSWER:

Plaintiff admits that the CCC Report reflects the use of “comparable” vehicles to value Plaintiff’s loss Vehicle. Plaintiff further admits that the CCC Report reflects the application of a uniform and unitemized condition adjustment to each “comparable” vehicle. Plaintiff otherwise denies this Request.

REQUEST FOR ADMISSION NO. 5: Admit that your father accepted the valuation contained in the CCC Report.

ANSWER:

Plaintiff objects to the word “accepted” as used in this Request. Plaintiff does not accept the valuation contained in the CCC Report as an accurate reflection of the value of Plaintiff’s loss vehicle. For these reasons, the request is denied.

REQUEST FOR ADMISSION NO. 6: Admit that your father requested payment for your total loss settlement to be made via FedEx.

ANSWER:

Plaintiff objects to the word “settlement” as used in Request for Admission No. 6. Plaintiff has not settled her claims against Defendant. This request is denied.

REQUEST FOR ADMISSION NO. 7: Admit that your counsel, Michael Malone, spoke with Garrison, on your behalf, regarding the adjustment of your total loss vehicle claim.

ANSWER:

Admitted.

REQUEST FOR ADMISSION NO. 8: Admit that your counsel, Michael Malone, accepted the settlement of the property damage to your total loss vehicle under Part D of the insurance policy.

ANSWER:

Plaintiff objects to the word “settlement” as used in Request for Admission No. 8. Plaintiff has not settled her claims against Defendant. This request is denied.

REQUEST FOR ADMISSION NO. 9: Admit that as of October 17, 2016, the Vehicle had not been fully reconditioned.

ANSWER:

Admitted.

REQUEST FOR ADMISSION NO. 10: Admit that as of October 17, 2016, the Vehicle’s paint had fading and surface scratches.

ANSWER:

Plaintiff admits that as of October 17, 2016, the Vehicle had severe scratches due to the collision on October 2, 2016. Plaintiff denies that the paint had faded.

Plaintiff otherwise objects to this Request as compound. Plaintiff objects to the phrase “fading and surface scratches” as vague and ambiguous.

REQUEST FOR ADMISSION NO. 11: Admit that as of October 17, 2016, the Vehicle’s interior had tearing and the leather was worn.

ANSWER:

Plaintiff admits that there was one small crack in one of the leather seats inside the Loss vehicle. Plaintiff denies that any of the leather was torn or that the leather was worn out.

Plaintiff objects to the phrases “tearing” and “worn” as vague and ambiguous.

REQUEST FOR ADMISSION NO. 12: Admit that values offered by Kelley Blue Book are based on regional data.

ANSWER:

Plaintiff lacks sufficient information to admit or deny the manner by which Kelley Blue Book determines values of vehicles. Therefore, this Request is denied.

Plaintiff otherwise objects to this Request because it seeks information that is not relevant to any claim or defense in this litigation and is not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR ADMISSION NO. 13: Admit that Kelley Blue Book defines “Typical Listing Price” (formerly known as “Suggested Retail Price”) on its website as “representative of dealers’ asking prices.” See <https://www.kbb.com/company/faq/used-cars/>

ANSWER:

Plaintiff admits that as of the date of this response, the current website for Kelley Blue Book states that the Kelley Blue Book Typical Listing Price is representative of dealers’ asking prices.

Plaintiff otherwise objects to this Request because it seeks information that is not relevant to any claim or defense in this litigation and is not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR ADMISSION NO. 14: Admit that Kelley Blue Book explains on its website that “Typical Listing Price” (formerly known as “Suggested Retail Price”) “assumes that the vehicle has been fully reconditioned.” See <https://www.kbb.com/company/faq/used-cars/>

ANSWER:

Plaintiff admits that as of the date of this response, the current website for Kelley Blue Book states that the Kelley Blue Book Typical Listing Price assumes that the vehicle has been fully reconditioned.

Plaintiff otherwise objects to this Request because it seeks information that is not relevant to any claim or defense in this litigation and is not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR ADMISSION NO. 15: Admit that Kelley Blue Book explains on its website that for Typical Listing Price: “[t]he final sale price will likely be less depending on the vehicle’s actual condition, popularity, type of warranty offered and local market conditions. In other words, it’s the price you should expect a dealer to ask – not the price you should pay.” See <https://www.kbb.com/company/faq/used-cars/>

ANSWER:

Plaintiff admits that as of the date of this response, the current website for Kelley Blue Book states for the Kelley Blue Book Typical Listing Price as follows: “This price also takes into account the dealer's profit, costs for advertising, sales commissions and other costs of doing business. The final sale price will likely be less depending on the vehicle's actual condition,

popularity, type of warranty offered and local market conditions. In other words, it's the price you should expect a dealer to ask - not always the price you should pay.”

Plaintiff otherwise objects to this Request because it seeks information that is not relevant to any claim or defense in this litigation and is not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR ADMISSION NO. 16: Admit that NADA defines “clean retail value” on its website as a price reflecting “a vehicle in clean condition”. See <https://www.nadaguides.com/FAQ/values-and-pricing>)

ANSWER:

Denied. As of the date of this Response, the definition from the NADA website provides the following definition of “clean retail”: “Clean Retail values reflect a vehicle in clean condition. This means a vehicle with no mechanical defects and passes all necessary inspections with ease. Paint, body and wheels have minor surface scratching with a high gloss finish and shine. Interior reflects minimal soiling and wear with all equipment in complete working order. Vehicle has a clean title history. Because individual vehicle condition varies greatly, users of NADAguides.com may need to make independent adjustments for actual vehicle condition.”

Plaintiff otherwise objects to this Request because it seeks information that is not relevant to any claim or defense in this litigation.

REQUEST FOR ADMISSION NO. 17: Admit that NADA does not perform a physical inspection of each vehicle prior to calculating its suggested price.

ANSWER:

Plaintiff lacks sufficient information to admit or deny this Request. Therefore, this Request is denied.

Plaintiff otherwise objects to this Request because it seeks information that is not relevant to any claim or defense in this litigation and is not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR ADMISSION NO. 18: Admit that Kelley Blue Book does not perform a physical inspection of each vehicle prior to calculating its suggested price.

ANSWER:

Plaintiff lacks sufficient information to admit or deny this Request. Therefore, this Request is denied.

Plaintiff otherwise objects to this Request because it seeks information that is not relevant to any claim or defense in this litigation and is not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR ADMISSION NO. 19: Admit that your Vehicle was not in “clean retail condition” as that term is used by NADA.

ANSWER:

Denied.

II. INTERROGATORIES

INTERROGATORY NO. 1: Identify all persons who provided information that was used in answering these Interrogatories, and for each person identified, briefly state the information provided.

ANSWER:

Plaintiff provided the information used in answering these interrogatories.

Plaintiff otherwise objects to this Interrogatory to the extent it seeks information protected by attorney-client or work product privilege.

INTERROGATORY NO. 2: Identify all persons who have knowledge or information pertaining to your claims in this case or to the matters alleged in the Amended Complaint, including but not limited to your claims for damages; and for each person identified, describe the nature of his or her knowledge or information.

ANSWER:

Plaintiff and her counsel have knowledge pertaining to her claim. Plaintiff otherwise asserts that representatives of Defendant who are readily ascertainable by Defendant but are presently unknown to Plaintiff have knowledge relating to Plaintiff's claim, as well as representatives of CCC who are presently unknown to Plaintiff who have knowledge of the use of condition adjustments as part of the valuation of total loss vehicles. Finally, Plaintiff incorporates all disclosure statements served in this case by any party as though fully set forth herein.

Plaintiff otherwise objects to this Interrogatory as a premature contention interrogatory that cannot be fully answered until discovery is complete. Plaintiff reserves the right to supplement her response in due course. Plaintiff further objects to this Interrogatory because it seeks information that is not relevant to any claim or defense in this litigation and is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects because this Interrogatory seeks information more readily available to Defendant. For example, Garrison knows which of its

representatives have knowledge of certain aspects of Plaintiff's claim. Plaintiff further objects to this Request as vague and ambiguous. Finally, Plaintiff objects to this Interrogatory as vague and overbroad and unduly burdensome as it is not limited in time or scope.

INTERROGATORY NO. 3: Identify all individuals, including attorneys but excluding members of the alleged class, who have a pecuniary interest in the outcome of this lawsuit or who have paid or agreed to pay a portion of your attorney fees and/or expenditures in connection with this lawsuit, including but not limited to the name and address of such individuals, the nature of the pecuniary interest, and the nature and amount of any payment.

ANSWER:

Plaintiff, members of the putative class, and Defendant have a pecuniary interest in the outcome of this lawsuit. Plaintiff additionally incorporates Plaintiff's Rights and Responsibilities agreement produced at Bates No. FORTSON_000111-000114 as though fully set forth herein and as permitted under Rule of Federal Civil Procedure 33.

Plaintiff otherwise objects to this Interrogatory as seeking information relating to attorney-client privilege. Plaintiff further objects to this Request as unduly burdensome and oppressive in that it seeks information that is not known or reasonably accessible to Plaintiff such as requiring Plaintiff to determine every individual who has a pecuniary interest in the outcome of this lawsuit without any limitation in scope. Finally, Plaintiff objects to this Interrogatory as compound.

INTERROGATORY NO. 4: Identify any other lawsuits You have been or are a party to including (a) caption, style, and case number of the lawsuit, (b) the court in which the

lawsuit(s) was or is pending, (c) the nature of the claims made by or against You, (d) the date You either instituted the lawsuit(s) or were served with process in the lawsuit(s) or intervened in the lawsuit(s), and (e) the status of the lawsuit(s) at the present time.

ANSWER:

Plaintiff has not been a party to any other lawsuits.

Plaintiff otherwise objects to this Interrogatory because it seeks information, in part, that is not relevant to any claim or defense in this litigation. Plaintiff objects to this Request as oppressive and unduly burdensome as it is not limited in time and seeks information that is available in the public record. Plaintiff further objects because this question is compound.

INTERROGATORY NO. 5: Identify each expert witness whom You intend to call to testify at any class certification hearing or at the trial of this matter, or whose testimony You intend to submit via affidavit or declaration; and for each expert, identify the subjects upon which such expert will opine.

ANSWER:

Plaintiff will disclose experts in accordance with the court's scheduling order and incorporates those disclosures as though fully set forth herein.

Plaintiff otherwise objects to this Interrogatory to the extent it seeks information that is protected by the attorney-client and/or work product privilege.

INTERROGATORY NO. 6: Identify each non-expert witness whom You intend to call to testify at any class certification hearing or at the trial of this matter, or whose testimony You intend to submit via affidavit or declaration; and for each non-expert, identify the subjects upon which such witness is expected to testify.

ANSWER:

Plaintiff incorporates all disclosure statements served in this case by any party as though fully set forth herein.

Plaintiff objects to this Request because it seeks information that is outside the scope of discoverable information pursuant to Rule 26 of the Federal Rules of Civil Procedure. Plaintiff further objects to this Request as premature and oppressive in that it requires Plaintiff to be able to identify every witness she plans to call, the method by which she intends to present each witness' testimony, and the scope of their testimony, well before the close of discovery. Furthermore, this Request seeks information relating to litigation strategy and thus are protected by attorney-client and attorney-work product privilege. Plaintiff further objects to this Request as vague and ambiguous. Plaintiff further Plaintiff reserves the right to supplement her response.

INTERROGATORY NO. 7: Describe your relationship with Your counsel prior to this case, including the name and case numbers of any other cases for which your counsel represented You.

ANSWER:

Hendren, Redwine, and Malone represented Plaintiff in association with insurance claims relating to her October 2, 2016 collision. Plaintiff had no relationship with Hagens Berman Sobol Shapiro LLP preceding the instant case.

Plaintiff otherwise objects to this Request as irrelevant to any claim or defense in this litigation.

INTERROGATORY NO. 8: Identify all forms of social media You used from April 2017 to the present, and include your user names.

ANSWER:

Plaintiff has an Instagram account (username: Vail.Fortson), a Facebook account (username: Vail Fortson), a Snapchat account (username: evfortson) and a LinkedIn account (username: Vail Fortson).

Plaintiff otherwise objects to this Interrogatory because it seeks information that is not relevant to any claim or defense in this litigation. Plaintiff further objects to this Request as overbroad. Seeking information to all social media which the Plaintiff broadly may have had access to over the past three years is patently overbroad.

INTERROGATORY NO. 9: Identify any valuations, calculations or studies relating to the value of the Vehicle and when such valuations, calculations or studies were performed.

ANSWER:

At the request of Defendant, CCC performed a market valuation report for Plaintiff's total loss Vehicle in or around October of 2016.

Plaintiff otherwise objects to this Request as vague and ambiguous. The word "relating," for example, is facially overbroad, vague, and ambiguous. Plaintiff further objects to this Request as oppressive and unduly burdensome as it is not limited in time or scope and seeks information that is not known or reasonably accessible to Plaintiff or is otherwise more readily available to Defendant. For instance, Plaintiff cannot determine whether Defendant performed additional valuation studies pertaining to Plaintiff's total loss Vehicle without receiving discovery from Defendant. However, this information is readily available to Defendant. Plaintiff further objects to this

Interrogatory because it seeks information protected by attorney-client privilege or the work-product doctrine.

INTERROGATORY NO. 10: Identify every vehicle (truck or automobile) You have purchased in the past 10 years. For each vehicle please include (a) make of vehicle; (b) model of vehicle; (c) year of vehicle; (d) who sold You the vehicle; (e) advertised price for the vehicle; (f) the original price offered for sale of the vehicle; (g) the date you purchased the vehicle, (h) the price ultimately paid for the vehicle; (i) any valuation sources You consulted in connection with the purchase of the vehicle; and (j) any documents relating to the purchase of such vehicle.

ANSWER:

Plaintiff states that in approximately June or July of 2016, Plaintiff was gifted the loss Vehicle by her grandfather Robert Malcolm Fortson.

In 2019, Plaintiff bought a 2019 Subaru Ascent from Hendrick Subaru located at Southpoint in Durham, North Carolina. Additionally Plaintiff expressly incorporates the vehicle sticker produced at FORTSON_000115-000117 as though fully set forth herein.

Plaintiff will produce additional documents relating to the purchase of her replacement vehicle in her possession, custody, or control. Plaintiff expressly incorporates those documents herein by reference.

Plaintiff otherwise objects to this Interrogatory because it seeks information that is not relevant to any claim or defense in this litigation. Plaintiff otherwise objects to this Request as vague and ambiguous.

INTERROGATORY NO. 11: Identify all maintenance performed on the Vehicle, including (a) type of service performed; (b) who performed maintenance of the vehicle; (c) date of maintenance service.

ANSWER:

Plaintiff states that she had the loss Vehicle for about three months before the collision and that she does not recall any maintenance performed on the Vehicle during that time. Plaintiff states that prior to gifting her the loss Vehicle in the summer of 2016, her grandfather had the Vehicle fully serviced, and this service included installation of new tires at an auto repair shop in Jacksonville, Florida.

Plaintiff further objects to this Request as vague and overly broad as it is not limited in time or scope. Specifically, the request does not specify whether it seeks information for the period preceding or following the incident which caused the vehicle to become a total loss. Plaintiff reserves the right to supplement her response.

INTERROGATORY NO. 12: Identify whether you claim that Garrison acknowledged Plaintiff's right to recover the damage to Plaintiff's Vehicle under the uninsured motorists coverage, and if so, please identify all facts supporting this contention.

ANSWER:

Plaintiff does not contend that Garrison ever agreed to Plaintiff's request to recover for the total loss of her vehicle under the uninsured motorists coverage.

Plaintiff otherwise objects on the grounds that requiring her to identify "all facts supporting this contention" is overly burdensome. *See Steil v. Humana Kansas City, Inc.*, 1197 F.R.D. 445, 447 (D. Kan. 2000). Plaintiff further objects to Interrogatory No. 12 as a premature contention interrogatory that

cannot be answered until discovery is completed. Plaintiff reserves the right to supplement her response in due course.

INTERROGATORY NO. 13: Identify all facts in Your possession that support or establish a good-faith basis for Your allegation in paragraph 44 of the Amended Complaint that “Garrison does not ever attempt to establish the condition of comparable vehicles identified in market valuation reports obtained from CCC.”

ANSWER:

Plaintiff has reviewed her claim file and there is no indication that Garrison inspected the condition of the comparable vehicles contained in the CCC report for her total loss vehicle. Plaintiff is informed and believes that Garrison does not ever attempt to establish the condition of comparable vehicles identified in the market valuation reports provided by CCC. Plaintiff otherwise objects to Interrogatory No. 13 on the grounds that requiring Plaintiff to identify “all facts” supporting her allegation as set forth in paragraph 44 of the Complaint is overly burdensome. *See Steil v. Humana Kansas City, Inc.*, 1197 F.R.D. 445, 447 (D. Kan. 2000). Plaintiff further objects because Interrogatory No. 13 seeks information protected by attorney-client privilege or work-product protections. Plaintiff further objects to Interrogatory No. 13 as a premature contention interrogatory that cannot be answered at this stage of the litigation. Plaintiff reserves the right to supplement her response.

INTERROGATORY NO. 14: Identify all facts in Your possession that support or establish a good-faith basis for Your allegation in paragraph 45 of the Amended Complaint that “Garrison bases its offers and payments for total losses on manipulated data and reports.”

ANSWER:

Garrison based its payment for the total loss of Plaintiff's vehicle solely on the CCC market valuation report. The CCC market valuation report improperly reduced the estimated value of Plaintiff's loss vehicle by applying arbitrary and unexplained condition adjustments to each of the comparable vehicles listed therein. Plaintiff otherwise objects to Interrogatory No. 14 on the grounds that requiring Plaintiff to identify "all facts" supporting her allegation as set forth in paragraph 45 of the Complaint is overly burdensome. *See Steil v. Humana Kansas City, Inc.*, 1197 F.R.D. 445, 447 (D. Kan. 2000). Plaintiff further objects because Interrogatory No. 14 seeks information protected by attorney-client privilege or work-product protections. Plaintiff further objects to Interrogatory No. 14 as a premature contention interrogatory that cannot be answered at this stage of the litigation. Plaintiff reserves the right to supplement her response.

INTERROGATORY NO. 15: Identify all facts in Your possession that support or establish a good-faith basis for Your allegation in paragraph 45 of the Amended Complaint that the condition adjustments imposed on the values of comparable vehicles are "arbitrary and unexplained."

ANSWER:

Plaintiff has reviewed the CCC market valuation report valuing her loss vehicle. The valuation report applies uniform, unitemized condition adjustments to each of the comparable vehicles contained therein regardless of mileage or any other unique attributes of the comparable vehicles. Additionally, the CCC valuation report provides only a vague definition of the condition adjustment which does not include any specific details describing or explaining the basis for the amount of the purported condition adjustment.

Further, Defendant did not provide Plaintiff with an itemized explanation of the condition adjustment applied to comparable vehicles.

Plaintiff otherwise objects to Interrogatory No. 15 on the grounds that requiring Plaintiff to identify “all facts” supporting her allegation as set forth in paragraph 45 of the Complaint is overly burdensome. *See Steil v. Humana Kansas City, Inc.*, 1197 F.R.D. 445, 447 (D. Kan. 2000). Plaintiff further objects because Interrogatory No. 15 seeks information protected by attorney-client privilege or work-product protections. Plaintiff further objects to Interrogatory No. 15 as a premature contention interrogatory that cannot be answered at this stage of the litigation. Plaintiff reserves the right to supplement her response.

INTERROGATORY NO. 16: Identify all facts in Your possession that support or establish a good-faith basis for Your allegation in paragraph 47 of the Amended Complaint that “Garrison [sic] methods are unfair, misleading, deliberately inconsistent, and calculated to confuse and deceive consumers and their advocates in the settlement process.”

ANSWER:

Plaintiff states that Garrison based its payment for the total loss of her vehicle solely on the CCC Report which improperly reduced the payment to her through the application of a same dollar amount condition adjustment applied to the comparable vehicles, regardless of condition, and that the purported explanation of the condition adjustment within the CCC report does not explain the basis of the condition adjustment. Plaintiff otherwise objects to Interrogatory No. 16 on the grounds that requiring Plaintiff to identify “all facts” supporting her allegation as set forth in paragraph 47 of the Complaint is overly burdensome. *See Steil v. Humana Kansas City, Inc.*,

1197 F.R.D. 445, 447 (D. Kan. 2000). Plaintiff further objects because Interrogatory No. 16 seeks information protected by attorney-client privilege or work-product protections. Plaintiff further objects to Interrogatory No. 16 as a premature contention interrogatory that cannot be answered at this stage of the litigation. Plaintiff reserves the right to supplement her response.

INTERROGATORY NO. 17: Identify each and every time that You disputed the valuation of your vehicle as determined by Garrison, including the method and manner for which You disputed the valuation.

ANSWER:

Plaintiff incorporates her claim file located at Bates Nos. Garrison P&C 0000001-0000441 as permitted by Rule 33 of the Federal Rules of Civil Procedure as record of her disputes with Garrison regarding the valuation of her loss vehicle including the method and manner for which she disputed the valuation. Plaintiff further states that she specifically disputed the use of the condition adjustment by letter faxed to Garrison on November 14, 2017. Additionally, Plaintiff disputed the valuation of her loss vehicle by filing the present action.

Plaintiff otherwise objects to Interrogatory No. 17 on the grounds that the information sought is equally available to Defendant who would have been party to such disputes. Plaintiff further objects to this Interrogatory as vague, ambiguous, and overbroad. For example, the term “disputed” is not defined and the request is not limited in scope. Plaintiff further objects to this Interrogatory because it seeks information unrelated to a claim or defense in this case.

INTERROGATORY NO. 18: Identify all communications that You have had with the putative class members, including the name of the putative class member, the date of the communication, the method of the communication, and a brief description of the content of the communication.

ANSWER:

Plaintiff states that she has not contacted any putative class members.

Plaintiff otherwise objects to this Request to the extent it seeks information that is protected by the attorney/client and/or work product privilege. Plaintiff further objects to this Request as overbroad and harassing. Plaintiff further objects to this Interrogatory because it seeks information unrelated to a claim or defense in this case.

INTERROGATORY NO. 19: Identify and describe all non-privileged communications that your counsel, Michael Malone, had concerning the adjustment of your total loss vehicle claim that is the subject of the Amended Complaint.

ANSWER:

Plaintiff incorporates her claim file located at Bates Nos. Garrison P&C 0000001-0000441 as permitted by Rule 33 of the Federal Rules of Civil Procedure as record of her counsel's non-privileged communications regarding the condition adjustment. Plaintiff further states that her attorney left a message for Alexandra Sammon on October 25, 2016; spoke with Alexandra Sammon on October 26, 2016; left a message for Alexandra Sammon on November 1, 2016; left a message for Alexandra Sammon on November 2, 2016; spoke with Jimmy Ficklin on November 4, 2016; left a message for Jimmy Ficklin on November 10, 2016; spoke with Jimmy Ficklin on November 14, 2016. Plaintiff otherwise objects to this Interrogatory because it seeks information that is not relevant to any claim or defense in this litigation and

is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to the extent this Interrogatory seeks information covered by the attorney/client privilege/work product doctrine. Plaintiff also objects to this Request because it seeks information more readily available to Defendant.

INTERROGATORY NO. 20: If Your answer to any of Garrison's Requests for Admission is anything other than an unequivocal admission, state all facts upon which You base your response.

ANSWER:

Plaintiff directs Defendant to the responses to the above requests for admission.

Otherwise, Plaintiff object to this Interrogatory because it contains numerous subparts which exceed the number of interrogatories permitted under Rule 33(a)(1). Furthermore, Plaintiff objects because this is a premature contention interrogatory that cannot be fully answered until the close of discovery. Plaintiff reserves the right to supplement her Response.

INTERROGATORY NO. 21: Identify and itemize all damages You seek to recover from Garrison in the Amended Complaint, including but not limited to the following:

- a. The total amount of compensatory damages, including any separate categories or subcategories of damages;
- b. An explanation of how such damages were calculated or determined; and
- c. Identify all documents and sources of information used to calculate such damages.

ANSWER:

Plaintiff incorporates all disclosures and responses to discovery, by parties and non-parties, in this case as though fully set forth herein. Plaintiff, on behalf of herself and the putative class, seeks compensatory damages that include the amount of Garrison's illicit condition adjustments plus any out-of-pocket losses suffered by her or any class member in the course of contesting the unlawful valuation. Plaintiff also seeks treble damages as well as an award of attorney's fees and costs. In addition, and in the alternative to the damages described and other compensatory damages, Plaintiff seeks a declaration invalidating Garrison's valuation of her claim and the claims of the class, as well as an affirmative injunction requiring Garrison to determine the proper claim payment for all total loss vehicles using permissible methods.

Plaintiff otherwise objects to this Request to the extent it seeks the premature disclosure of expert opinions, or requires the Plaintiff to set forth analysis, opinions, or theories that may be the subject of expert testimony. Plaintiff will submit expert opinions in accordance with the Court's scheduling order, and incorporates those reports as though fully set forth herein.

INTERROGATORY NO. 22: Identify all persons who You have communicated with regarding Your claims in this case or to the matters alleged in the Amended Complaint, and for each person identified, described the nature of the communication and the date of the communication.

ANSWER:

Plaintiff incorporates her claim file located at Bates Nos. Garrison P&C 0000001-0000441 as though fully set forth herein as permitted by Rule 33 of the Federal Rules of Civil Procedure.

Plaintiff otherwise objects to Interrogatory No. 22 on the grounds that this information is equally available to Defendant who would have been party to such communications. Plaintiff further objects to this Interrogatory as overbroad, oppressive, and unduly burdensome as it is not limited in time or in scope. Plaintiff further objects to the extent this Request seeks information protected by attorney-client privilege and/or the work product doctrine. Plaintiff further objects to this Interrogatory because it seeks information unrelated to a claim or defense in this case.

III. REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUESTS FOR PRODUCTION NO. 1: Produce all documents in Your or Your attorneys' possession, custody, or control that refer, relate, or pertain in any way to Garrison's coverage of the loss of the Vehicle, including but not limited to all correspondence, email, and other communications between You and Garrison.

RESPONSE:

Plaintiff will produce non-privileged, responsive documents in her possession, custody, or control.

Plaintiff otherwise objects to this Request as vague, ambiguous, and overbroad. Plaintiff further objects to this Request as this information is equally if not more readily available to Defendant.

REQUESTS FOR PRODUCTION NO. 2: Produce all documents that relate to the claims or issues in this lawsuit, in Your or Your attorneys' possession, custody, or control, and that were created by or originally came from Garrison.

RESPONSE:

Plaintiff will produce non-privileged, responsive documents in her possession, custody, or control.

Plaintiff otherwise objects to this Request as vague, ambiguous, and overbroad. Plaintiff further objects to this Request as this information is equally if not more readily available to Defendant. Plaintiff also objects because this Request seeks documents protected by the attorney/client privilege and/or work product doctrine.

REQUESTS FOR PRODUCTION NO. 3: Produce all documents that constitute or that refer, relate, or pertain in any way to communications between You or Your attorneys and the North Carolina Department of Insurance, and any of its divisions and offices, regarding Garrison, the CCC System, or any of the matters alleged in the Amended Complaint.

RESPONSE:

Plaintiff has no responsive documents in her possession, custody, or control.

Plaintiff otherwise objects to this Request as vague, ambiguous, and overbroad.

REQUESTS FOR PRODUCTION NO. 4: Produce all documents reflecting or constituting any agreement between You or Your attorneys and any other person referring, relating, or pertaining in any way to the matters alleged in the Amended Complaint.

RESPONSE:

Plaintiff will produce all non-privileged, responsive documents in her possession, custody or control.

Plaintiff otherwise objects to this Request because it seeks information that is not relevant to any claim or defense in this litigation and is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff

further objects to the extent this Request seeks disclosure of privileged attorney-client communications or documents protected by the work product doctrine.

REQUESTS FOR PRODUCTION NO. 5: Produce all documents You relied upon in responding to Garrison's Interrogatories and Requests for Admission.

RESPONSE:

Plaintiff will produce all responsive, non-privileged documents in her possession, custody, or control.

Plaintiff otherwise objects to this Request to the extent it seeks information that is protected by attorney-client privilege and/or the work product doctrine. Plaintiff further objects because this Request seeks information not relevant to a claim or defense in this case.

REQUESTS FOR PRODUCTION NO. 6: Produce all documents You intend to introduce as evidence at trial.

RESPONSE:

Plaintiff objects to this request because it seeks to ascertain all documents which Plaintiff intends to offer at trial and, as such, is violative of the attorney work product privilege. *See, e.g., IBP, Inc. v. Mercantile Bank of Topeka*, 179 F.R.D. 316, 322 (D. Kan. 1998).

REQUESTS FOR PRODUCTION NO. 7: Produce all documents reflecting maintenance work performed on Your Vehicle.

RESPONSE:

Plaintiff will produce all non-privileged, responsive documents in her possession, custody, or control.

Plaintiff otherwise objects to this Request to the extent it seeks information that is not relevant to a claim or defense of this case. Plaintiff further objects to this Request as vague and overly broad as it is not limited in time or scope. Specifically, the request does not specify whether it seeks information for the period preceding or following the incident which caused the vehicle to become a total loss.

REQUESTS FOR PRODUCTION NO. 8: Produce all documents reflecting the advertised price of Your Vehicle.

RESPONSE:

Plaintiff has no responsive documents in her possession, custody, or control.

REQUESTS FOR PRODUCTION NO. 9: Produce all documents related to the purchase of Your Vehicle, including financing information.

RESPONSE:

Plaintiff has no responsive documents in her possession, custody, or control.

REQUESTS FOR PRODUCTION NO. 10: Produce all documents related to the valuation of the Vehicle and comparable vehicles.

RESPONSE:

Plaintiff will produce all non-privileged, responsive documents in her possession, custody, or control.

Plaintiff otherwise objects to this Request as ambiguous and overbroad.

REQUESTS FOR PRODUCTION NO. 11: Produce all documents relating to any vehicle identified in Interrogatory No. 10, including documents relating to the purchase or sale of those vehicles.

RESPONSE:

Plaintiff will produce all non-privileged, responsive documents in her possession, custody, or control.

Plaintiff otherwise objects to this Request as ambiguous and overbroad. Plaintiff further objects to this Request because it seeks information that is not relevant to any claim or defense in this litigation.

REQUESTS FOR PRODUCTION NO. 12: Produce all documents relating to maintenance suggested by a manufacturer for the Vehicle.

RESPONSE:

Plaintiff will produce all non-privileged, responsive documents in her possession, custody, or control.

Plaintiff otherwise objects to this Request as ambiguous and overbroad. Plaintiff further objects to this Request because it seeks information that is not relevant to any claim or defense in this litigation.

REQUESTS FOR PRODUCTION NO. 13: Produce all documents and communications with any insurance company other than Garrison that relate to the October 17, 2016 accident involving the Vehicle, excluding all such communications relating to bodily injury.

RESPONSE:

No such documents exist.

Plaintiff otherwise objects to this Request as ambiguous and overbroad. Plaintiff further objects to this Request because it seeks information that is not relevant to any claim or defense in this litigation.

REQUESTS FOR PRODUCTION NO. 14: Produce all documents evidencing a valuation of Your Vehicle or a “comparable” vehicle, including, but not limited to, Kelley Blue Book reports, NADA reports, Edmunds reports, or other vehicle valuation guides or services.

RESPONSE:

Plaintiff will produce all non-privileged, responsive documents in her possession, custody or control.

Plaintiff otherwise objects to this Request because it seeks information that is not relevant to any claim or defense in this litigation. Plaintiff further objects to this Request to the extent it seeks premature expert opinions, analysis, or reports before the time set forth by the Court to exchange expert reports. Plaintiff may submit expert opinions in accordance with the Court’s scheduling order, and incorporates those reports as though fully set forth herein

REQUESTS FOR PRODUCTION NO. 15: Produce all documents regarding the settlement of Your total loss claim, excluding those documents sent to, or received from, Garrison.

RESPONSE:

Plaintiff will produce all non-privileged, responsive documents in her possession, custody or control.

Plaintiff otherwise objects to the word “settlement” as used in Request for Production No. 15. Plaintiff has not settled her claims against Defendant.

Plaintiff further objects because this information is equally available to Defendant as Plaintiff. Plaintiff otherwise objects to this Request as vague and ambiguous. The request is also not proportional to the needs of the case, and many of the documents requested are not relevant to a claim or defense in this case and therefore beyond the scope of discovery.

REQUESTS FOR PRODUCTION NO. 16: Produce all communications between You and any putative class member relating to the allegations in your Amended Complaint.

RESPONSE:

There are no documents responsive to this Request.

Plaintiff otherwise objects to this Request to the extent it seeks information that is protected by the attorney-client and/or work product Privilege. The request is also not proportional to the needs of the case, and many of the documents requested are not relevant to a claim or defense in this case and therefore beyond the scope of discovery.

REQUESTS FOR PRODUCTION NO. 17: Produce all communications between your counsel, Michael Malone, and Garrison regarding the adjustment of your total loss vehicle.

RESPONSE:

Plaintiff will produce all non-privileged, responsive documents in her possession, custody or control.

Plaintiff otherwise objects because this information is equally available to Defendant as Plaintiff. Plaintiff otherwise objects to this Request as vague and ambiguous. The request is also not proportional to the needs of the case, and many of the documents requested are not relevant to a claim or defense in this case and therefore beyond the scope of discovery.

REQUESTS FOR PRODUCTION NO. 18: Produce all documents that support, relate to, or upon which You base the allegation that “Garrison does not ever attempt to establish the condition of comparable vehicles identified in market valuation reports obtained from CCC,” as alleged in paragraph 44 of the Amended Complaint.

RESPONSE:

Plaintiff will produce all non-privileged, responsive documents in her possession, custody or control.

Plaintiff otherwise objects to Request for Production No. 18 on the grounds that requiring Plaintiff to produce all documents supporting her allegations is overly burdensome. Plaintiff further objects because this Request seeks information protected by attorney work-product and/or attorney-client privilege. Plaintiff further objects because the documents sought are more readily available to Defendant than to Plaintiff. Plaintiff further objects to this Request as a premature contention request that cannot be answered at this stage of the litigation. Plaintiff reserves the right to supplement her response.

REQUESTS FOR PRODUCTION NO. 19: All documents that support, relate to, or upon which You base the allegation that the condition adjustments imposed on the values of comparable vehicles are “arbitrary and unexplained,” as alleged in paragraph 45 of the Amended Complaint.

RESPONSE:

Plaintiff will produce all non-privileged, responsive documents in her possession, custody or control.

Plaintiff otherwise objects to Request for Production No. 19 on the grounds that requiring Plaintiff to produce all documents supporting her allegations is overly burdensome. Plaintiff further objects because this

Request seeks information protected by attorney work-product and/or attorney-client privilege. Plaintiff further objects because the documents sought are more readily available to Defendant than to Plaintiff. Plaintiff further objects to this Request as a premature contention request that cannot be answered at this stage of the litigation. Plaintiff reserves the right to supplement her response.

REQUESTS FOR PRODUCTION NO. 20: Produce all documents that support, relate to, or upon which You base the allegation that “Garrison bases its offers and payments for total losses on manipulated data and reports,” as alleged in paragraph 45 of the Amended Complaint.

RESPONSE:

Plaintiff will produce all non-privileged, responsive documents in her possession, custody or control.

Plaintiff otherwise objects to Request for Production No. 20 on the grounds that requiring Plaintiff to produce all documents supporting her allegations is overly burdensome. Plaintiff further objects because this Request seeks information protected by attorney work-product and/or attorney-client privilege. Plaintiff further objects because the documents sought are more readily available to Defendant than to Plaintiff. Plaintiff further objects to this Request as a premature contention request that cannot be answered at this stage of the litigation. Plaintiff reserves the right to supplement her response.

REQUESTS FOR PRODUCTION NO. 21: All documents that support, relate to, or upon which You base the allegation that “Garrison [sic] methods are unfair, misleading, deliberately inconsistent, and calculated to confuse and deceive consumers and their

advocates in the settlement process,” as alleged in paragraph 47 of the Amended Complaint.

RESPONSE:

Plaintiff will produce all non-privileged, responsive documents in her possession, custody or control.

Plaintiff otherwise objects to Request for Production No. 19 on the grounds that requiring Plaintiff to produce all documents supporting her allegations is overly burdensome. Plaintiff further objects because this Request seeks information protected by attorney work-product and/or attorney-client privilege. Plaintiff further objects because the documents sought are more readily available to Defendant than to Plaintiff. Plaintiff further objects to this Request as a premature contention request that cannot be answered at this stage of the litigation. Plaintiff reserves the right to supplement her response.

REQUESTS FOR PRODUCTION NO. 22: All documents not previously produced that refer or relate to Your claims or allegations against Garrison, or that You intend or expect to offer as evidence in support of class certification in this matter.

RESPONSE:

Plaintiff will produce all non-privileged, responsive documents in her possession, custody or control.

Plaintiff objects to this Request because it seeks information that is outside the scope of discoverable information pursuant to Rule 26 of the Federal Rules of Civil Procedure. Plaintiff further objects to this Request as premature and oppressive in that it requires Plaintiff to be able to identify every document she intends to use as evidence in support of class certification during the infancy of discovery. Furthermore, this Request seeks documents

and information relating to litigation strategy and thus are protected by attorney-client and attorney-work product privilege. Plaintiff further objects to this Request as vague and ambiguous. Plaintiff further Plaintiff reserves the right to supplement her response.

Dated this the 3rd day of January, 2020.

HAGENS BERMAN SOBOL SHAPIRO LLP

By: /s/ John M. DeStefano
 Robert B. Carey (*pro hac vice*)
 John M. DeStefano (*pro hac vice*)
 11 West Jefferson Street, Suite 1000
 Phoenix, AZ 85003
 Telephone: (602) 224-2628
 Facsimile: (602) 840-3012
 Email: rob@hbsslaw.com
 Email: johnd@hbsslaw.com

HENDREN REDWINE & MALONE, PLLC

By: /s/ J. Michael Malone
 J. Michael Malone, Esq.
 N.C. State Bar No.: 26512
 Hendren, Redwine & Malone, PLLC
 4600 Marriott Drive, Suite 150
 Raleigh, NC 27612
 mmalone@hendrenmalone.com
 Telephone: (919) 573-1423
 Facsimile: (919) 420-0475

Counsel for Plaintiff

CERTIFICATE OF SERVICE

On January 3, 2020, I served the foregoing document described as **PLAINTIFF'S RESPONSES TO DEFENDANT GARRISON PROPERTY AND CASUALTY INSURANCE COMPANY'S FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSION, AND REQUESTS FOR PRODUCTION OF DOCUMENTS** by email this day to the below parties and/or counsel of record:

Matthew B. Tynan
 Kimberly M. Martson
 Reid L. Phillips
BROOKS PIERCE MCLENDON HUMPHREY & LEONARD
 PO Box 26000
 Greensboro, NC 27420-6000
mtynan@brookspierce.com
kmarston@brookspierce.com
rphillips@brookspierce.com

Rodger L. Eckelberry
 Martina T. Ellerbe
 Matthew Drocton
BAKER HOSTETLER LLP
 200 Civic Center Dr., Ste. 2200
 Columbus, OH 43215
Reckelberry@bakerlaw.com
mellerbe@bakerlaw.com
mdrocton@bakerlaw.com

/s/ John M. DeStefano

 John M. DeStefano



**STATE OF WEST VIRGINIA
OFFICES OF THE INSURANCE COMMISSIONER**

APPROVED LIST OF VALUATION PRODUCTS

The following list comprises all companies which have received the Insurance Commissioner's approval for use as an Official Used Car Guide and identifies their respective valuation products.

1. Audatex North America, Inc.
 - Autosource
 - Autosource Direct
2. CARFAX, Inc.
 - CARFAX Total Loss Valuation Service
3. CCC Information Services, Inc.
 - CCC Valuescope Claim Services
4. Mitchell International, Inc.
 - Mitchell WorkCenter Total Loss
5. National Automobile Dealers Association (NADA)
 - NADA Used Car Guide
 - NADA Older Used Car Guide
 - NADA Classic, Collectible and Special Interest Car Appraisal Guide
 - NADA Manufactured Housing Appraisal Guide
 - NADA Residual Guide
 - NADA New Vehicle Invoice Guide
 - NADA Motorcycle, Snowmobile, ATV, Personal Watercraft Appraisal Guide
 - NADA Antique, Classic and Special Interest Motorcycle Appraisal Guide
 - NADA Recreation Vehicle Appraisal Guide
 - NADA Van, Truck Conversion and Limousine Appraisal Guide
 - NADA Marine Appraisal Guide
 - NADA Older Marine Appraisal Guide
 - NADA Commercial Truck Guide
6. National Auto Research (Black Book)
 - Xpress for New Cars
 - Xpress New Car Invoice
 - UVC Xpress for Used Cars

- Xpress for Used Cars
 - Autograph Xpress
 - Xpress On-line
 - Motorcycle Xpress
 - Xpress Exotic and Older Cars
 - New Car Invoice Guide
 - Weekly Used Car Guide
 - Monthly Used Car Guide
 - Truck and Van Guide
 - Old Car Market Guide.
 - Motorcycle Value Guide
 - Retail Used Car Market Guide
 - Residual Value Guide
 - Dollar Residual Value Guide
 - CPI-Cars of Particular Interest
 - Heavy Duty Truck Guide
7. Primedia Price Digest (Red Book)
- The Automobile Red Book
 - The Older Automobile Red Book
 - Combination Automobile and Older Automobile Red Book
 - The Truck Blue Book
 - The Older Truck Blue Book
 - Commercial Trailer Blue Book
 - Truck Body Blue Book
 - Truck Identification Book
 - Clymer Powersport Vehicle Blue Book
 - Recreational Vehicle Blue Book
 - Horse Trailer Blue Book
 - ABOS Marine Blue Book
 - ABOS Combo Specials
 - Electronic Auto Red Book
 - Electronic Truck Blue Book
 - Electronic ABOS Marine Blue Book
 - Electronic ABOS Marine Blue Book - Assessor's Edition
8. Vehicle Valuation Services, Inc.
9. AutoBid

The above list supersedes any prior approved list. Should you have any questions regarding the above list, please contact the Consumer Services Division at OICConsumerServices@wv.gov or by calling 1-888-TRY-WVIC.

Issued: October 15, 2020





STATE OF WEST VIRGINIA
Offices of the Insurance Commissioner

James A. Dodrill
Insurance Commissioner

June 16, 2021

Kevin P. Zimmerman, Esquire
Baker & Hostetler LLP
200 Civic Center Drive, Suite 1200
Columbus, Ohio 43215-4138

RE: Certification of Copy of Public Record:
Insurance Commissioner of the State of
West Virginia's Order entered 9/27/2002

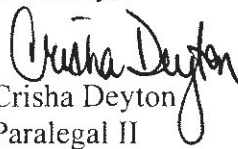
Mr. Zimmerman:

This correspondence is in response to your June 10, 2021 letter requesting completion of a Certification of Copies of Public Records.

Pursuant to your request, enclosed please find said Certification of Copies of Public Records.

If you have any questions, please do not hesitate to contact me.

Sincerely,


Crisha Deyton
Paralegal II

/cdd

Enclosure



**CERTIFICATION OF COPIES OF PUBLIC RECORDS PURSUANT TO
FED. R. EVID. 902(4), FED. R. CIV. P. 44, AND FED. R. EVID. 803(8)**

State of: West Virginia

County of: Kanawha

Pursuant to 28 U.S.C. § 1746, I, Victor A. Mullins, hereby certify as follows:

1. I am over 21 years of age, of sound mind, and otherwise competent to make this Certification. The evidence set forth in this Certification is based on my personal knowledge.

2. I am an Associate Counsel for the West Virginia Offices of the Insurance Commissioner.

3. I am the custodian of records for the West Virginia Offices of the Insurance Commissioner.

4. Attached hereto as Exhibit 1 is a true and correct copy of the Insurance Commissioner of the State of West Virginia's Order entered on September 27, 2002 in *In re: CCC Information Services, Inc.*, Civil Action No. 02-AA-48. I am the public officer, or a deputy of the public officer, with legal custody of the document attached at Exhibit 1.

5. The document attached at Exhibit 1 is a public record. It is a record or statement of a public office that sets out: (i) the office's activities, (ii) a matter observed while under a legal duty to report, or (ii) factual findings from a legally authorized investigation.

6. I affix hereto the seal of the office of West Virginia Offices of the Insurance Commissioner.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 6/16/2021



Victor A. Mullins, Records Custodian

Offices of the WV Insurance Commissioner
900 Pennsylvania Avenue
Charleston, WV 26302
(304) 414-8026

Exhibit 1

**PROCEEDINGS BEFORE JANE L. CLINE
INSURANCE COMMISSIONER OF THE STATE OF WEST VIRGINIA**

IN RE: CCC INFORMATION SERVICES, INC.

v.

**JANE L. CLINE, INSURANCE COMMISSIONER
OF WEST VIRGINIA**

CIVIL ACTION NO. 02-AA-48

This matter is again within the jurisdiction of the Insurance Commissioner as a result of an Agreed Circuit Court Order remanding the matter for entry of a new Administrative Order as a result of CCC and Nationwide's voluntary disclosure of the entire contract between CCC and Nationwide. Now having reviewed the same, the undersigned rescinds the Order of March 12, 2002, disapproving the use of CCC as a used car guide, and now finds as follows:

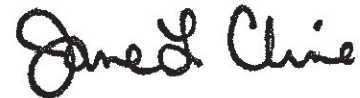
1. Nothing in the aforesaid contract, or the record otherwise created before the Insurance Commission, or on appeal, suggests any unfair method of competition or Unfair Claims Settlement Practice disqualifying it from use.
2. The evidence which is reflected in the record demonstrates that the methodology used by CCC is at least as fair as that used by NADA and other used car guides presently approved.

The undersigned therefore concludes that CCC should now be approved as an additional official used car guide subject to the terms also imposed on other approved guides.

Accordingly, it is hereby ORDERED that CCC is approved as an official used car guide in the State of West Virginia effective with the entry hereof; PROVIDED, HOWEVER, that the approval hereby given is subject to periodic review by the Insurance Commissioner and appropriate further action, which may include revocation of approval; it is further ORDERED, as

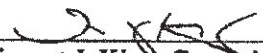
a condition of continued approval by the Insurance Commission, that CCC is required to provide to the Director of the Consumer Service Division, West Virginia Insurance Commission, a quarterly report of all total loss or total theft vehicles valued for West Virginia residents, no later than thirty (30) calendar days after the end of each quarter, which must include the following for each total loss valued: the valuation date; insurer name; zip code of consumer's residence; year, make, model, body style, engine, odometer reading, and VIN number of the total loss or total theft vehicle; the total loss valuation amount; confirmation that the total loss valuation amount represents the retail value of the subject vehicle; and any other information deemed necessary by the Commissioner.

Entered this 27th day of September, 2002.



Jane L. Cline
Insurance Commissioner

Prepared By:



Vincent J. King, General Counsel
West Virginia Insurance Commission
P.O. Box 50540
Charleston, WV 25305-0540

Consumer's Guide to Auto Insurance

**State of Wisconsin
Office of the Commissioner of Insurance
P.O. Box 7873
Madison, WI 53707-7873
oci.wi.gov**

**The mission of the Office of
the Commissioner of Insurance . . .
Leading the way in informing and protecting
the public and responding to their insurance needs.**

If you have a specific complaint about your insurance, refer it first to the insurance company or agent involved. If you do not receive satisfactory answers, contact the Office of the Commissioner of Insurance (OCI).

To file a complaint online or to print a complaint form:

OCI's Web Site
oci.wi.gov

Phone
(608) 266-0103 (In Madison)
or
(800) 236-8517 (Statewide)

Mailing Address
Office of the Commissioner of Insurance
P.O. Box 7873
Madison, WI 53707-7873

Electronic Mail
ocicomplaints@wisconsin.gov

Please indicate your name, phone number, and email address.

**Deaf, hearing, or speech impaired callers may
reach OCI through WI TRS**

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Why Should You Buy Auto Insurance?

Insurance is based on the theory most drivers will not be involved in accidents. Premiums paid by all drivers during the year are used to pay for losses of the few drivers who have accidents. When you buy insurance, you receive financial protection in case you become involved in an accident. You also make sure a person injured through your fault will recover for losses you cause.

For example, if you are in an auto accident, you may be found responsible for losses of other people involved. A claim may be made or a lawsuit filed against you, and you may not only have to pay for property damage but also for medical expenses, lost wages, and pain and suffering of any injured person. The amount of money you may have to pay could be substantial.

If you do not have insurance, anything of value you own, including your home, savings, future wages, and other assets, may be taken to pay for those losses. Auto liability insurance can help protect you so this does not happen. Liability insurance also pays for an attorney to defend you against any claim or lawsuit that may be payable under the policy.

You can also buy insurance to cover damages to your auto. This optional coverage will help pay for your losses whether or not you were at fault.

Components of Auto Insurance

There are many components of auto insurance including mandatory and optional coverage. Your policy must contain three major parts—liability insurance for bodily injury, liability insurance for property damage, and uninsured motorist coverage. Optional coverage includes underinsured motorist, medical expense coverage, collision and comprehensive coverage.

Mandatory Auto Insurance Requirements

While many components of auto insurance have changed over the years, requiring *all drivers have motor vehicle liability insurance remains mandatory*. This requirement falls under the purview of the Department of Transportation, Division of Motor Vehicles (DMV).

Wisconsin drivers are required to have an automobile insurance policy in force or, in limited situations, other security which could be a surety bond, personal funds, or certificate of self-insurance. Details are available from the Department of Transportation (wisconsindot.gov/Pages/dmv/license-drvs/susp-or-rvkd/proof-of-insurance.aspx).

Your policy must provide at least the following minimum liability coverage:

- \$25,000 for injury or death of one person;
- \$50,000 for injury or death of two or more people; and
- \$10,000 for property damage.

Uninsured motorist coverage of at least \$25,000/\$50,000 each for bodily injury only is also mandatory.

Liability Insurance

When referring to liability limits, the designation of \$50,000/\$100,000/\$15,000 (or 50/100/15) or similar designations refer to the maximum amounts an insurer will pay for three basic liability coverages. The first number (\$50,000) refers to the limit on bodily injury payments coverage per person. The second number (\$100,000) refers to the limit on bodily injury coverage per accident where two or more people have been injured. The third number (\$15,000) refers to the limit on property damage coverage per accident.

Bodily Injury Liability Coverage does not protect you or your car directly. If you cause an accident injuring other people, it protects you against their claims up to the stated amounts for medical expenses, lost wages, pain and suffering, and other losses. It will also usually pay if the accident was caused by a member of your family living with you or a person using your auto with your consent.

Property Damage Liability Coverage pays for damage you cause to the property of others such as a crushed fender, broken glass, or a damaged wall or fence. Your insurance will pay for this damage if you were driving your auto or if it was being driven by another person with your consent. Property damage liability also pays if you damage government property like a light pole or signpost, up to the limit you choose.

Uninsured Motorist Coverage (UM)

Uninsured motorist coverage applies to bodily injury you, your family, and other occupants of your vehicle incur when hit by an uninsured motorist or a hit-and-run driver. It also covers you and your family if injured as a pedestrian when struck by an uninsured motorist or a hit-and-run driver. It protects you by making sure money is available to pay for your injuries caused by someone else. The minimum amount of coverage required by law is \$25,000/\$50,000 for bodily injury only. These coverages are the *minimum* required by law; you may want to purchase more than minimum coverage required by law if you feel the need for more protection. Uninsured motorist coverage does not cover your property damage and does not protect the other driver. Your insurer may sue the other driver for any money your insurer pays you because of the other driver's negligence.

Underinsured Motorist Coverage (UIM)

Underinsured motorists (UIM) coverage increases the bodily injury protection to you and the people in your car up to the amount of coverage you purchase if the at-fault party's bodily injury liability insurance limits are lower than your UIM coverage limits.

Underinsured motorist coverage is not mandatory. The insurer must notify you with the delivery of your policy that UIM coverage is available. You may reject buying UIM coverage. However, if purchased, coverage limits of at least \$50,000 per person and \$100,000 per accident are required.

You should carefully review your policy to determine exactly what coverage is provided by UIM.

Medical Payments Coverage

This coverage pays medical or funeral expenses for you or others injured or killed in an accident while riding or driving in your auto. This includes all reasonable hospital, surgical, chiropractic, x-ray, dental, professional nursing, prosthetic, and rehabilitation expenses up to the limits of coverage.

Medical payments coverage usually covers only those expenses not covered by health insurance, such as copayments, deductibles, etc. It will also cover you or members of your family if you are struck by an auto while walking or while riding in another auto. This coverage will pay for your medical and funeral expenses even if you cause the accident. Usually, only expenses incurred within one year after the accident are included. As an example, this coverage will provide benefits for a friend or a neighbor's child injured in your car. Medical expense coverage is an optional coverage. **Note: Insurance companies must offer this coverage to you, but you do not have to buy it.** The minimum limit that can be purchased is \$1,000.

Physical Damage Coverage

If you borrow money from a bank or some other financial institution to buy your car, the lender will probably require you to purchase physical damage coverage to protect both of your interests in the car.

"Collision" and "Comprehensive" coverages, which are also known as physical damage coverages, pay for repair or the actual cash value of your auto regardless of who is at fault.

Comprehensive and collision premiums are based on the make, model, and year of your car. You should evaluate the current market value of your car and your ability to afford a similar car should it be destroyed before you purchase this coverage. You may not need this coverage if your car has decreased in value or if you can afford to replace it.

Collision coverage pays if your auto collides with an object, including another car or hit-and-run car, or if it overturns. Your own insurer will pay for such damage even if the collision is your fault.

Comprehensive coverage pays for damage to your auto from almost all other causes such as fire, vandalism, water, hail, glass breakage, wind, falling objects, civil commotion, or hitting an animal. Damage from striking a deer is a relatively frequent accident in Wisconsin. It is important to know most policies cover hitting an animal under comprehensive, not collision, insurance.

Comprehensive coverage also pays if your auto or parts of it, such as a battery or tires, are stolen. Flood damage to your car is also covered if your auto insurance policy includes comprehensive coverage. If you carry collision without comprehensive coverage, you are **not** covered for flood damage.

Underwriting and Rating

Comparison shopping for car insurance is often beneficial. Premiums are based on a number of factors and may vary a great deal from one insurer to another for the same policy. The most important items in establishing your rate are:

Your age, sex, and marital status. For example, young, single male drivers generally pay more than any other group.

Where you live. Most insurance companies divide the state into territories for rating purposes. Generally, people in metropolitan areas pay more than those in less congested places.

Your car. The year, make, and model of your car influence your premium. The less it costs to repair or replace your vehicle, the lower the cost of your premium. Sports cars and cars with high powered engines cost more to insure than cars with smaller engines.

How you use your car. Generally the more you drive, the more you pay.

Prior insurance coverage. Insurers may ask you if you had insurance coverage previously. If you have previously been canceled for nonpayment of premiums, insurers may want to know. If you have had insurance, the prior company can tell the new insurer a little about your claims history.

When an insurance company considers your application for auto coverage, it will take into account a number of different factors about you and your driving record. Just because you apply with a certain company does not mean you will be provided coverage by the company.

After completion of underwriting, the insurance company will place you in one of the three basic categories of drivers listed below. Each company adopts its own rating system for deciding whether to insure a person. Those with the lowest risk factors (least likely to have a claim) will receive the lowest rates.

Preferred. This category is intended for drivers insurance companies consider being the best risks, which usually means the safest drivers. These insureds are usually ones with clean driving records over the past three to five years. These are given the lowest rates.

Standard. This category is intended for moderate risk drivers. The rates are higher than the preferred rates. These drivers are usually driving family-type cars and have a reasonably clean driving record.

Nonstandard. This category is intended for drivers insurance companies consider being high risk. Usually drivers in this category have the highest rates. These drivers may include drivers under age 25 with less driving experience, drivers with tickets or accidents, drivers with a poor premium payment history, and drivers with a reckless or drunk-driving history.

Your agent should be able to tell what classification you fit into. The dividing lines are not always consistent across insurers, but in general an applicant with chargeable accidents will be denied coverage by the lowest cost insurers in the above examples. These insurers are relatively low cost because their customers are better than average drivers. Since you generally cannot tell from the name or promotional ads of an insurer what its underwriting criteria are, seek help from a qualified agent to find which insurer might insure you.

Credit Information

Consumer credit information may be requested by an insurer when writing new or renewal policies for both commercial and personal risks. Some insurance companies believe certain credit information may be an indicator of frequency and severity of future claims.

Insurance companies must use credit information in a way that is not unfairly discriminatory. If an insurer rejects your insurance application based on information contained in your credit report, you have the right to review the report information for accuracy, at *no charge*. You must request a copy of the report directly from the credit agency. Your insurance company will provide you with the credit agency's name, address, and telephone number.

Insurers may use credit information as one of the criteria they consider when underwriting personal lines insurance. However, it is the position of OCI that insurers should not use credit information, whether they use credit reports or credit scoring mechanisms, as the sole reason to refuse an application, cancel a new insurance policy in its first 60 days of coverage, or nonrenew an existing policy.

For more information on the Fair Credit Reporting Act (www.ftc.gov/os/statutes/fcrajump.shtm) contact the Federal Trade Commission at:

Federal Trade Commission (FTC)
600 Pennsylvania Avenue, NW
Washington, DC 20580
1-877-FTC-HELP (382-4357)
www.ftc.gov

OCI publishes a fact sheet answering questions about how insurance companies use credit history in their underwriting process. The publication *Understanding How Insurance Companies Use Credit Information* is available at oci.wi.gov/Documents/Consumers/PI-204.pdf or by calling 1-800-236-8517.

Ways to Lower Your Premium

There are many actions you can take to lower the cost of your automobile insurance.

Safe Driving

Your driving record is very important in determining your premiums. Most insurers charge more—often substantially more—for people who have a recent history of accidents and/or moving violations than for people with relatively clean records. Therefore, it is important to ask your agent to go over all facts concerning your driving record and check all other information for accuracy on your application for a policy. A mistake on your application could cost you money or result in cancellation of your insurance policy.

Note: Wisconsin law allows insurers to rate based on all the members in a household including husband, wife, children, or nonrelative, and the law does not allow insurers to exclude drivers by endorsement.

Your present insurer may charge a higher rate, a surcharge, if you are involved in a chargeable accident or were ticketed for a serious traffic violation. Surcharges must be applied in a uniform manner and are required to be filed with OCI. The insurer may also elect to nonrenew your policy as it expires if your accident record or moving violations exceed the insurer's standards.

Take Advantage of Discounts

Every auto insurance company has its own package of "special" discounts to attract particular types of customers. Below is a sample of discounts to ask your agent about.

- Package discount—up to 15% is offered to customers who insure both their home and automobile with the same insurer.
- Multiple automobile discount—insuring more than one automobile almost always qualifies an insured for a discount.
- Good student discount—typically a 10 to 20% discount is offered if a youthful driver maintains a "B" or better grade average in high school or college.
- Nonsmokers discount—a few insurers offer discounts of 5 to 10% for insureds who do not smoke.
- Passive restraints discount—several companies offer discounts of up to 40% on medical payments coverage for driver and/or passenger air bags, automatic seat belts, or anti-lock brakes.
- Accident/claim free discount—insurers commonly reduce premiums for each year you have been continuously insured by them without being involved in an accident or filing a claim.
- Pay in full discount—some companies offer a discount for paying your premium in one lump sum or by automatic electronic payments. You can also save service charges by paying your premiums in a lump sum rather than in installments.

In addition, you may avoid late fees by paying your bill on time. Also, many insurance companies use consumer credit information as a rating factor. Maintaining a good credit history may lower your rate.

A good agent will be sure to inquire about your particular circumstances to acquaint you with all applicable discount packages offered by the insurer he or she represents.

Increase Deductibles

Many factors that go into determining your auto premium are relatively fixed by your household make-up and lifestyle. However, one thing you can easily change is your deductible amount (usually only applies to comprehensive or collision coverage).

A deductible is the dollar amount you must pay out-of-pocket for each covered claim. Deductibles on collision coverage can range from \$100 to \$1,000. On comprehensive coverage they can range from \$100 to \$500 or higher.

Before deciding the deductible level, you must consider your ability to absorb unexpected financial demands. For example, if a loss of \$500 occurs and you have a deductible of \$250, you pay \$250 (your deductible) and you collect \$250 from your insurer. If a loss of less than \$250 occurs, you pay for all of it yourself.

If you increase your deductible and pay for small losses yourself, your insurer can charge you less. This way you can cut your insurance premium costs and still be protected against large losses.

Youthful Drivers

The cost of automobile insurance varies from one group (classification) of drivers to another. On average, some groups have worse driving records, higher accident rates, and more costly accidents than others. Usually, the highest premiums are paid by a male driver under age 25, with his rate depending on his marital status and whether he owns, or is the principal driver, of the car being insured. Under the most widely used rating system, the cost of auto insurance for youthful drivers is scaled downward periodically. Rates for unmarried males who are owners of their cars are reduced periodically from age 17-29.

In most states, rates for unmarried males who are not owners of their cars, for married males, and for females are reduced each year from age 17-21. For these groups, "young driver" surcharges are eliminated at age 25.

Underage Drinking and Driving

Auto insurance premiums may be tripled or the policy nonrenewed for parents whose underage children receive operating while intoxicated (OWI) citations.

OCI surveyed the 20 top writers of auto insurance in the state. Of the 20 insurance companies surveyed, 6 said parents' insurance rates would be affected if a minor received a citation for underage drinking when the minor has NOT been driving. The policy could be nonrenewed, canceled, be renewed with nonstandard rates, or be surcharged. The rate increases range from 90% to 260%.

Of the 20 insurance companies surveyed, 19 reported a rate increase or policy cancellation if a minor receives an OWI citation. The rate increases range from 47% to 300%.

If your child is cited for underage drinking where the violation involved operation or use of a motor vehicle, the insurer might nonrenew the parents' insurance policy or increase the premium, which would remain at the higher level for a number of years or until the child leaves the household. If a child is cited for underage drinking involving a motor vehicle, the parents' insurance rate may be affected for a minimum of three years, or until the minor is no longer a member of the household, or no longer on the policy. OCI recommends the insurance company investigate whether the violation is driving-related before using an underage drinking violation to underwrite or rate a policy. (Section Ins 6.54 (3) (a) 1., Wis. Adm. Code, prohibits using an insured's or applicant's criminal records.)

If a young driver in your household has received citations for driving-related violations, including an OWI, those violations can also affect other policies held by the parents. One of the companies reported a possible effect for umbrella policies, and for two other companies, a citation would affect insurance rates on other non-auto motor vehicles, such as boats, or snowmobiles.

The Department of Motor Vehicles will release any records related to drinking and driving, even for a minor, to insurance companies when requested. Wisconsin driver records that are not confidential can be accessed by anyone under open records law. Records that are not confidential include OWI and UAO (Underage Alcohol Operation).

If you add another vehicle to your policy or change your insurance coverage, ask your agent to issue a binder confirming the coverage. A binder is a temporary written agreement, issued in the name of the insurance company, taking the place of the policy or endorsement until the policy or endorsement is issued. Only a binder is evidence of immediate coverage.

What if You Have Trouble Finding Insurance?

If you try several insurers and cannot find coverage, you most likely can be insured through the Wisconsin Automobile Insurance Plan (WAIP). This is a plan created by Wisconsin law to provide automobile insurance to those who cannot secure coverage from usual market sources.

When you apply, you will be assigned to a licensed insurer who will issue you a policy. Since it is a last resort plan, rates charged will usually be somewhat higher than rates charged in the voluntary market. While you are in the plan, you should continue to shop for less expensive coverage. After four years, the company insuring you must accept you for regular coverage if you have had a clean driving record.

You may apply through any licensed property and casualty insurance agent. For general information on WAIP, you may call or visit www.wcrb.org/WAIP/WAIP_home.aspx.

Wisconsin Auto Insurance Plan (WAIP)
20700 Swenson Drive, Suite 100
Waukesha, WI 53186
(262) 796-4540

Safety Responsibility Law

Wisconsin has a Safety Responsibility Law to protect persons who suffer damages in accidents caused by uninsured motorists who do not pay for damages or injuries they cause.

The law requires any time a person is hurt or killed or property damage exceeds \$1,000, the accident must be reported as soon as possible. You must file a Driver's Report of Accident within 10 days with the Division of Motor Vehicles (DMV). If a police agency investigates the accident, the police will file this report for you.

DMV checks accident reports to see if drivers have insurance coverage. If all drivers are insured, no action is taken. If DMV determines a driver is uninsured and appears to be at fault, the law allows DMV to suspend their driver license and vehicle registration if he/she does not pay for damages or injuries they caused.

For more information, contact the Wisconsin Division of Motor Vehicles, Traffic Accident Section, Room 804, P.O. Box 7919, Madison, Wisconsin 53707-7919, or at (608) 266-1249. Information about the Safety Responsibility Law is also available on the Wisconsin Department of Transportation's Web site at wisconsindot.gov/Pages/dmv/license-drvs/rcd-crsh-rpt/srlaw.aspx.

Comparative Negligence Law

Wisconsin has a comparative negligence law, which means responsibility is frequently shared. The comparative negligence law is based on a percentage of negligence. This means you may recover damages from another party only if your negligence **is not greater than** the other party. Recovery for your damages will be reduced by the percent of negligence attributed to you. You are barred from recovery if your negligence is greater than another party's negligence.

If You Are in an Accident

Call the police. A police report can help if you have an accident or if your car is stolen or damaged by vandals. What looks like a minor dent could be several hundred dollars' worth of damage.

Obtain information. The insurance company will need complete information. Exchange insurance information with the other driver. Write down names, addresses, telephone numbers, and license number of persons involved and of witnesses. Note the time, date, location, road conditions, year and make of vehicles involved, apparent damage and injuries, and your version of what happened. Make a diagram of the accident. Take pictures of the scene and damage with a cell phone or camera.

Filing an Insurance Claim

Call your agent or insurer. Phone your agent or the insurer promptly, even if you are far from home. Ask what forms or documents will be needed to support your claim. The insurer may require a "proof of loss" form, as well as documents relating to your claim, such as medical and repair bills and a copy of the police report. If you have any questions, your agent should be able to assist you in filling out the forms.

Cooperate and answer all questions fully. The insurer may call you for more information or ask to examine your damaged vehicle. Supply the information the insurer needs. In order to determine the extent of damage, they must have access to the vehicle. Cooperate with the investigation and settlement of the claim. Cooperate with the defense of any claim and provide your insurer with copies of any legal papers you receive in connection with your accident. Your insurer will represent you if a claim is brought against you and defend you if you are sued for a claim covered by the policy.

Keep receipts and records. Keep receipts and records of expenses you incur as a result of the accident. Save copies of all documents you send or receive. You may need them later.

Take notes. Whenever you talk with insurance company employees, your agent, lawyers, police, or others, write down the date, times, names, and subjects you talked about. Include all decisions or promises made.

Report worker's compensation claim. If you are injured in a motor vehicle accident while conducting work-related activities for your employer, also file a worker's compensation claim with your employer. Your employer's worker's compensation policy will cover your medical expenses and loss of income.

If you travel frequently, you may want to check with your insurer or agent to find out how to file a claim when you are out of the area.

Repairing Your Car

Coverage for your vehicle in a personal auto insurance policy is not based on replacement cost. The policy is based on "actual cash value" of the automobile. The actual cash value (ACV) of the automobile is based on the value of the vehicle at the time of loss, taking into account its current market value. Therefore, the insurer's obligation is to repair the car based upon its ACV not its replacement cost.

If your car is damaged in an accident, your insurer will request you to submit one or more written estimates for the cost of repairs. This permits you and your insurer to compare estimates and have your vehicle repaired at the lowest possible cost. Competitive body shop estimates reduce insurance claim costs, which help in maintaining or reducing auto insurance rates.

Your insurer may suggest, but cannot require, you to have your car repaired at a specific auto repair shop. If you choose to have repairs done at a facility not approved by your insurer, you are responsible for any repair costs exceeding the final claim settlement.

Auto repair shops may use aftermarket or used parts when repairing or replacing a damaged part (i.e., bumpers, bumper covers, and associated bumper parts). Aftermarket parts are produced by companies other than the original equipment manufacturers (known as OEM parts).

Auto insurance contracts do not generally specify what parts will be used. You may request aftermarket parts not be used to repair your vehicle, but you are responsible for any repair costs exceeding the final claim settlement negotiated with the insurer.

If Your Vehicle is a Total Loss

An insurance company will consider your vehicle a total loss if repairs would cost more than it is worth. An insurance company will use various sources to value your car including, *but not limited to*, the National Automobile Dealers Association Used Car Guide ("Blue Book") or the CCC Information Services, Inc., guide. The company's offer, therefore, might not recognize your car's condition, special features, or value on the local market. Companies must use a fair and reasonable method to determine the value of your car. You have the right to know how the value was determined and you should be sure to give the insurance company all information affecting the value of your car.

It may come down to negotiation between you and the insurance company to reach an agreement on the value of your car. A company is more likely to raise its offer if you can show your car would sell for a higher price in your area. Get several used car dealers' written price quotes for a similar automobile. Newspaper used-car ads can also help support your position.

Remember, an insurance company will not compensate you for the sentimental value of your car.

Lender Insurance Requirements

If you finance your car, the lender will require you to have car insurance. The terms of your loan will most likely require you to provide comprehensive and collision insurance. If your insurance policy lapses, the bank will force coverage (obtain a policy) and charge you for it. Forced coverage provides protection to the bank, not you, for their interest in the car and nothing else and can be costly.

If a bank has forced insurance coverage on your car, it is in your best interest to obtain regular insurance immediately. The forced coverage provides no liability insurance. These policies can be as much as three times more expensive, compared to a regular policy, and the charges for these policies will be added on to your loan amount.

Note: If your car is in an accident, your insurance company will pay for repairs or replacement only up to the car's ACV—the amount it would have sold for before the accident. The ACV is unrelated to the amount of your car loan and may be less than what you owe on your loan. Your insurance company is obligated to return your vehicle to the condition it was prior to the accident and you are responsible for what you owe on your car loan.

Vehicles in Storage

If you plan to not use your car for an extended period of time and decide to place it in a garage, you may want to ask your agent to suspend some coverages so you will not have to pay the premium associated with these charges. However, your car might still be susceptible to physical damage so consider maintaining comprehensive and possibly collision coverage while your vehicle is in storage.

Extended Warranties

Some extended warranty plans (sometimes called service contracts) providing repair and replacement services beyond what the product manufacturer offers are regulated by OCI. If you want to know if a warranty plan is licensed in Wisconsin, see OCI's website at oci.wi.gov or call (608) 266-0103 or toll-free 1-800-236-8517.

If you have a problem with a vehicle manufacturer warranty plan, contact:

Department of Transportation
Dealer Regulation Unit, Room 806
P.O. Box 7909
Madison, WI 53707-7909
(608) 266-1425
wisconsindot.gov

Collision Damage Waiver Coverage

Rental car companies often sell collision damage waiver (CDW) coverage. A CDW is a contract offered by rental car companies. A contract shifts liability for collision damage from the person renting the car to the car rental company. Collision damage to the rental car is any damage resulting from an accident. Most personal auto policies include coverage for damage to a rental car. Before renting a car, check with your agent to see if you have coverage under your personal auto policy. It is also important to note if there is a difference in value between your car and the rental car.

Note: If you rent a car in an area where your regular insurance does not provide coverage (i.e., anywhere outside the United States and Canada), purchasing a CDW is probably worthwhile.

If you are having problems with a car rental company, you should contact the agency handling consumer protection issues in the state in which you rented the car.

In Wisconsin, contact:

Department of Agriculture, Trade & Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708-8911
(800) 422-7128
datcp.wi.gov

Insurance Marketing

When you begin to contact insurers, there are a few items you should know about how insurance companies operate.

Generally, insurance is sold directly through an insurance company or indirectly through an agent or broker. An independent agent may represent more than one, and sometimes several, insurance companies. An exclusive agent sells solely for one insurance company or group of related companies if the insurance company or group writes that type of insurance. Independent agents, as well as exclusive agents, may place business with another company if the company(s) he or she represents does not write the type of insurance needed. A broker represents you in dealings with an insurance company.

When you first talk to an agent, be sure he or she is willing and able to explain various policies and other insurance-related matters. An agent should look for ways to get you the most protection at an affordable cost. Make sure your agent agrees to review your coverage from time to time, advises you about other financial services, and assists you when problems develop.

Some agents are interested in selling package products or services to as many people as possible. While there is nothing wrong with low-cost, standardized products, they should fit your needs. If you are not convinced a particular agent understands your needs and will give you the service you want, seek another agent.

Agents and insurers differ. Consider recommendations from friends. All companies and agents doing business in Wisconsin are licensed by OCI. Licensing information may be found on OCI's Web site at oci.wi.gov or by calling 1-800-236-8517.

For Your Protection

Information is available to consumers from a number of sources. These sources include Internet, public libraries, state insurance departments, consumer groups, and consumer publications. Financial strength and being able to meet financial obligations to policyholders is very important.

Independent organizations such as A.M. Best, Standard & Poor's, Moody's Investors Service, and others publish financial ratings. These rating organizations do not rate the quality of insurer's policies, practices, agents, or service. You should consider checking with at least two organizations to evaluate an insurance company's strength. If you want to check on an insurer's financial stability, you can check the reference section of your public library for published ratings, call OCI, or check with your insurance agent.

Every state has a safety net to protect insurance consumers from financial loss in the rare instance an insurer becomes insolvent. This safety net is called a "guaranty fund." Guaranty funds are established by state law and are composed of licensed insurers in the state. They pay the claims of policyholders and other claimants of an insolvent company. The money to pay claims against the insurance company comes from assessments made against all insurance companies that are members of the guaranty fund.

In Wisconsin, this fund is called the Wisconsin Insurance Security Fund (Fund). The Fund is created by state law and is funded by assessments of insurers licensed to do business in Wisconsin. In general, the Fund protects residents for most claims of licensed insurers in liquidation. The Fund should not be relied upon to eliminate all risks of loss to insureds due to insurer insolvency. Some types of policies may not be fully covered and significant delays could occur in settling obligations in cases of liquidation.

Questions about coverage and limitations of the Wisconsin Insurance Security Fund may be addressed to:

Wisconsin Insurance Security Fund
2820 Walton Commons Lane, Suite 135
Madison, WI 53718-6797
(608) 242-9473
www.wilifega.org/

Consumer Tips

- **Read your policy.** An auto insurance policy is a legal contract. It is written so your rights and responsibilities, as well as those of the insurer, are clearly stated.
- **Know what your needs are and find an insurer meeting your needs.** Some insurers insure not only your car, but your home, life and health. Buy adequate coverage, but do not buy more than you need.
- **Comparison shop.** It pays to shop around. Prices for the same coverage can vary greatly. A couple of hours of research can save you hundreds of dollars a year.
- **Check insurance costs before you buy a new or used car.** Insurance costs are higher for makes and models that are expensive to repair or are frequently stolen. Your agent can assist you in getting the best value for your insurance dollar.

- **Take advantage of low mileage discounts.** Some insurance companies offer significant discounts to drivers who keep their annual mileage at or below certain levels. In general, the less you drive, the more you can save.
- **Do not pay cash.** Always pay the agent or insurer with a check, money order, debit card, or credit card. This will be proof of your payment.
- **Some insurers will allow for electronic funds transfer arrangements (EFT).** EFTs allow your insurer to automatically deduct your premiums from your checking account during certain time periods; be aware of your scheduled withdrawals if you choose to take advantage of this option.
- **In the long run, being a safe driver is the best advice on how to keep your premiums low.** Lower rates are generally paid by those who maintain a good driving record.
- **While the price you pay is important, buying the least expensive policy may not necessarily be a good idea.** Insurance sounding too good to be true probably is too good to be true. However, looking only at benefits could result in paying a higher than necessary premium. You should consider the following when choosing a company and a policy:

- Premium
- Benefits, including any coverage exclusions or limits
- Service (what is involved in making a claim?)
- Renewability (how easily can you be canceled?)
- Financial strength and reliability of the company
- Company management philosophy

Termination, Denials, and Cancellations

New Policies

When a policy first becomes effective, the insurer may cancel the policy any time within the first 59 days. Cancellation is not effective until at least 10 days after the insurance company mails or delivers to you a written notice of cancellation.

Renewal on Altered Terms

Sometimes an insurer will renew a policy but will raise rates or make terms less favorable to the insured. An insurer may not alter terms of coverage until 60 days after a notice is mailed to you. To be effective, the notice must be mailed or delivered prior to the renewal date. If the notice is given less than 60 days before the renewal date, the new terms or premium increase will not become effective until 60 days have elapsed from the date the notice is given. These conditions do not apply if the only change is a rate increase of less than 25%. If the insurer fails to notify you of the new premiums or terms prior to your renewal date, the insurance company must continue your policy for an additional period of time equivalent to your expiring term and at the same premiums and terms of your expiring policy. [s. 631.36 (5), Wis. Stat.]

Midterm Cancellation

A midterm cancellation is a cancellation occurring during the policy term and prior to the policy's expiration or renewal date. An insurance company can only cancel coverage during this period if the premium is not paid or if there is a substantial change in the risk assumed by the insurance company. The insurer must either mail or deliver to you a written cancellation notice. No cancellation is effective until at least 10 days after mailing or delivery of the notice, and it must state with reasonable precision the facts on which the insurer's cancellation decision is based. [s. 631.36 (2) (b) and (6), Wis. Stat.]

Nonrenewals

Nonrenewal of a policy refers to the termination of a policy at the expiration date. If an insurer decides it does not want to renew your policy, *it must mail or deliver to you a nonrenewal notice at least 60 days before the policy's expiration date*. The nonrenewal notice must provide the reason for nonrenewal. The insurer must also provide information in the notice on how to apply to the Wisconsin Automobile Insurance Plan for coverage. Under certain conditions, these plans offer auto insurance to people who are unable to obtain it in the voluntary market. [s. 631.36 (4), (6), and (7), Wis. Stat.]

If an insurer fails to provide notice prior to the expiration date, it must continue your coverage under the terms and premium of your prior policy for the term of the policy or one year, whichever is less. [s. 631.36 (4) (a), Wis. Stat.]

Anniversary Cancellations

This refers to a policy written for an indefinite term or for more than one year. These policies may be canceled on any anniversary date if the policies contain cancellation provisions. If your insurer decides to cancel your policy on an anniversary date, it must mail or deliver to you a written notice at least 60 days prior to the anniversary date; this notice must state with reasonable precision the facts on which the insurer's cancellation decision is based. [s. 631.36 (3) and (6), Wis. Stat.]

General Anti-Discrimination Laws

There are statutes and rules protecting consumers from unfair discrimination in insurance policies.

- Insurers may not refuse to insure you or refuse to renew your policy on the basis of sex. [s. Ins 6.55, Wis. Adm. Code]
- Insurers may not refuse coverage to a class of risks solely on the basis of past criminal record, physical disability, past mental disability, age, marital status, sexual preference, "moral" character, or risk location. Insurers may not use these classifications to charge different rates without credible supporting information that must be filed with OCI.
- No insurer may cancel or refuse to issue or renew an automobile insurance policy wholly or partially because of one or more of the following characteristics of any person: age, sex, residence, race, color, creed, religion, national origin, ancestry, marital status, or occupation.

Some of these classifications may be used by an insurance company if its experience supports differences in losses from these classifications. [s. 632.35, Wis. Stat., and s. Ins 6.54, Wis. Adm. Code]

An insurer may not refuse, cancel, or deny coverage solely because of a past criminal record, physical or developmental disability, past mental disability, age, marital status, sexual preference, or "moral" character.

Problems With Your Insurance Company

If you are having a problem with your insurer, you may want to first check with your agent or with the company. If you do not get satisfactory answers from the agent or company, contact OCI. An online complaint form is available at ociaccess.oci.wi.gov/complaints/public/.

The more complete and accurate information you provide, the more likely it is your problem can be resolved. Be sure you have included the correct name of the insurance company your complaint is about. Many companies have very similar names. Listing the wrong name may delay investigation of your complaint.

Before signing an application for any insurance coverage, verify the company and agent you are dealing with are licensed in Wisconsin. Licensing information about agents and companies can be found on OCI's website at oci.wi.gov or by calling 1-800-236-8517.

It is illegal for unlicensed insurers to sell insurance. Business cards are not proof of a licensed insurance agent or company. If you do business with an unlicensed agent or company, you have no guarantee the coverage you pay for will ever be honored. If you purchase insurance from companies not legally doing business in the state, you will not be protected by the Wisconsin Insurance Security Fund should the company fail.

If an unlicensed agent or company contacts you, call OCI immediately so regulatory action can be taken. By doing so, you may protect someone less knowledgeable than you from being victimized.

OCI investigates complaints to determine if any insurance laws or rules have been violated. If any laws or rules have been violated, OCI will proceed with disciplinary action. Penalties include suspension or revocation of licenses or fines. OCI usually cannot settle a factual dispute; disputes based on a question of fact may have to be pursued through small claims court or with an attorney.

If you are not satisfied with the service you receive, contact your insurer or agent. The following industry associations may also help:

Independent Insurance Agents of Wisconsin
725 John Nolen Drive
Madison, WI 53713
(608) 256-4429
www.iiaw.com

Professional Insurance Agents of Wisconsin
6401 Odana Road
Madison, WI 53719
(608) 274-8188
www.piaaw.org

Community Insurance Information Center
600 West Virginia Street, Suite 101
Milwaukee, WI 53204
(414) 291-5360
insuranceinfo-ciic.org

**Automobile Insurance
Quotation Worksheet**

Rating Information

	Age	Sex	Marital Status	% Use of Car	Annual Mileage: _____
Principal Operator	_____	_____	_____	_____ %	Number of Miles One Way if Driving to and from Work Every Day: _____
Other Driver(s)	_____	_____	_____	_____ %	

Number of Accidents or Moving Violations in the Last 3 Years: _____
List on separate sheet. Use date of conviction for violations.

Type of Auto(s)	Make	Model & Year
Auto 1	_____	_____
Auto 2	_____	_____

Insurance Quotes - Semiannual Premiums

Liability Limits:	Company 1	Company 2	Company 3
Bodily Injury: _____ per person			
Bodily Injury: _____ per accident			
Property Damage: _____ per accident			

Uninsured Motorist

Bodily Injury: _____ per person
Bodily Injury: _____ per accident

Underinsured Motorist

Bodily Injury: _____ per person
Bodily Injury: _____ per accident

Physical Damage to Insured Vehicle

Comprehensive: _____ deductible
Collision: _____ deductible

Other Coverages: _____

TOTAL SEMIANNUAL PREMIUM: _____



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What You Should Know About...

Filing an Auto Damage Claim with Your Own Insurance Company

When your vehicle is damaged or stolen, one of the first things you should do is file an insurance claim. If another driver caused the damage to your vehicle, you have the option to file the claim either with your own insurance company, if you have the appropriate coverages (a **"first party" claim**), or with the insurer for the owner of the other car (a **"third party claim"**).

In order for you to be able to file a "first party" claim, your policy must provide **Collision or Comprehensive coverage** (see right). These are often referred to as "Physical Damage" coverages.

Collision coverage protects you from damage caused to your car by a collision with another vehicle, a fixed object, or an object lying in the roadway. Collision coverage also protects you from damage caused by the upset of your vehicle.

Comprehensive coverage protects you if your car is stolen or vandalized or damaged by contact with an animal or falling objects (i.e., tree limbs, rocks, stones, debris). It also covers your vehicle for glass breakage, fire, wind, hail, and flood damage.

If you file a first party claim, your insurance company will either pay to repair the damages to your vehicle or pay you the value of your vehicle if the damages exceed the car's worth. First, though, the company will subtract the deductible amount you have chosen for that coverage.

If you file a third party claim against another driver, the other driver's insurance company will only pay for damages to your vehicle to the extent that their insured was legally responsible. In some instances, this may not be enough to reimburse you for the full amount of your loss. ([More information on third party claims...](#))

Frequently Asked Questions

[Glossary of Insurance Terms](#)

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2. [What must I do after a loss?](#)
3. [What information must I give my insurance company?](#)
4. [When will my insurance company contact me and how long do they have to look at my vehicle?](#)
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1. Can I collect under "no-fault" insurance for damages to my vehicle if I was at fault for an accident and I do not carry first party coverage?

The answer is "NO". No-fault or Personal Injury Protection (PIP) insurance only pays for your own medical expenses if you are injured in an automobile accident, no matter who caused the accident. It does not pay for damage to a vehicle.

2. What must I do after a loss?

- Immediately report all losses to your insurance agent or company.
- Immediately report a loss to the police if your vehicle is stolen, vandalized, or damaged by a hit-and-run driver. Without a police report your company could deny your claim. In fact, under Division of Motor Vehicle law you are required to report any accident involving property damage in excess of \$500.00 to the appropriate authorities.
- You must make the damaged vehicle available for inspection by the insurance company before you have it repaired.
- Protect your vehicle from further damage. If you don't do this, your insurer could refuse to pay for any subsequent damage. For example, if you don't cover a broken windshield and rain damages the upholstery, your company could refuse to pay for the damaged upholstery.
- Cooperate with the insurance company's investigator. If you don't cooperate, the company could deny your claim.
- When you file a first party claim, you have a direct contract with your insurer that requires the company to fulfill all the conditions stated in your policy. However, the contract also places duties and requirements on you, the insured, when filing a claim. Therefore, you need to review that section of your policy often called "Conditions" or "Insured's Duties After a Loss."

3. What information must I give my insurance company?

- A copy of any legal documents you receive as a result of an accident, such as a letter from an attorney or a summons and complaint.
- A proof of loss, as may be required by the insurance company, describing the date of the loss, how it happened, who was driving, and any other relevant information. If a proof of loss is required, your company could deny your claim if you fail to provide it.
- Your company may also ask for other documents related to the claim such as repair bills or estimates, a copy of the police report, or a copy of the vehicle's title or bill of sale.
- In some cases, your company can also require you to submit to an examination under oath and produce requested documents. You do have the right to have an attorney present during the examination under oath. If you do not submit to the examination under oath, your company could deny your claim.

4. When will my insurance company contact me and how long do they have to look at my vehicle?

New Jersey insurance regulations require your insurance company to contact you within 10 working days after they have been notified of a loss, or if they intend to exercise their right to inspect the damaged vehicle, they must do so within 7 working days.

Your insurer can only require your vehicle to be made available for inspection at a time and place which is reasonably convenient for you.

5. How long does my insurance company have to settle my claim?

Your insurance company is allowed 30 calendar days to settle your first party claim from the time they receive notice of the loss. However, this time may be extended if the company needs to conduct additional investigation or if you fail to cooperate with them.

The company must provide you with written notice explaining the reason for the delay if the claim settlement process takes longer than 30 days.

6. Will my insurer pay for me to rent a car?

It depends. If your car is stolen, most insurance policies will reimburse you for a stated amount towards the cost of a rental vehicle for a limited time starting 48 hours after the theft, as long as you report the theft to the police and to the insurance company. Check your policy for the exact wording.

For non-theft claims, most policies don't provide coverage for a rental vehicle unless you buy this additional coverage. If another party was responsible for the accident, that party's insurer may be responsible for rental charges. ([For more information, see third party claims...](#))

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7. What about storage fees?

If your vehicle is not drivable after an accident and is towed to a storage facility, the storage facility will charge you a daily storage fee. Your insurance company must give you 3 working days notice before they stop paying for storage charges in order to give you time to move the vehicle to someplace where you won't incur storage charges.

8. Who decides whether or not my vehicle can be repaired?

After evaluating the damages to your vehicle, your insurance company has the option of repairing your vehicle, replacing your vehicle, or reimbursing you for the vehicle's **actual cash value (ACV)**. Actual cash value is the amount your vehicle would have sold for on the date of the accident.

Your insurance will elect to replace your vehicle or reimburse you for the ACV in those instances where the vehicle is economically impractical to repair.

A vehicle is considered economically impractical to repair, or a total loss, if the cost to repair the vehicle equals or exceeds the vehicle's ACV on the date of the loss. In many instances an insurance company will total a vehicle if the appraised damages equal 80% of the vehicle's ACV because often, once repairs are begun, additional damages or "hidden damages" are found which would render the vehicle a total loss by definition. (This is sometimes referred to as a "constructive total" loss).

9. Can I choose my own repair shop?

Yes. Provided the repair shop is licensed, your insurer has to try to reach an agreed price with the shop of your choice. If your company cannot reach an "agreed price", they will provide you with the names of licensed shops who can do the repairs for the price the company has determined.

10. Can I ask my insurer to recommend a repair shop?

Yes. At your request, your company must recommend a qualified repair facility convenient to the

vehicle's location which will repair the vehicle at the price the company is willing to pay and whose work is guaranteed. Your insurance company further stands behind the repair shop's guarantee.

11. Does my insurance company have to use new parts to repair my car?

No. The contract of insurance only obligates the insurance company to restore your vehicle to the same condition it was in before the loss. Sometimes this requires the use of **original equipment manufacturer (OEM)** parts and sometimes after-market parts can be used. After-market parts are parts made by a manufacturer other than the original manufacturer.

If your vehicle is being repaired with newer parts, your company doesn't have to pay for this "betterment". For example, if your vehicle's transmission is five years old and is damaged due to a covered loss, your insurer would only have to replace it with a five year old transmission. If a five year old transmission can't be found, the repair shop could use a new transmission but you'd have to pay the difference between the value of a five-year-old transmission and a new transmission.

12. Do I have to accept non-OEM parts?

No. While New Jersey regulations do permit the use of after-market parts as long as they are warranted by the manufacturer to be of like kind and quality as OEM parts, you don't have to accept them. The final choice is yours but if the insurer wants to use non-OEM parts and you decide to use more expensive OEM parts, you may have to pay the difference in cost.

The regulations also require the insurer to clearly indicate in writing on the appraisal which parts are after-market parts and pay for any modifications necessary.

13. Do I have to pay a deductible?

When you bought your policy, you chose a deductible for your physical damage coverages. This is the amount you are responsible for if a claim occurs. The higher your deductible, the lower the cost of your physical damage coverage. Your insurer will deduct that amount from the settlement of your claim.

Keep in mind that insurance companies consider it to be fraud if the repair shop inflates your repair estimate to help you recover the cost of your deductible.

14. How will the value of my vehicle be calculated to determine if it is a total loss?

Each insurance company is required to select one of three prescribed methods for use in the settlement of all their total loss claims.

The three methods which have been approved by the Commissioner of Banking and Insurance are:

1. Taking the average of the retail values of substantially similar vehicles as listed in the current editions of the "Automobile Red Book" (or "Older Car Red Book") published by Penton Media and the "N.A.D.A. Official Used Car Guide" (or "N.A.D.A. Official Older Car Guide") published by the National Automobile Dealers Used Car Company.
2. Using a quote obtained by the insurer for a substantially similar vehicle available for you to purchase from a dealership within 25 miles of where your car is normally garaged.
3. Utilizing the services of an approved source, including computerized databases that produce fair market values of substantially similar vehicles. At this time Audatex, Mitchell International, CCC, Vehicle Valuation Services Inc and CARFAX are approved for use in determining fair market values.

If your vehicle cannot be valued using any of these three methods because they fail to represent a true cross-section of the market to determine the fair market value of your car, the company is

then required to use the best available method and fully explain to you, in writing, how they calculated the amount they are offering you.

In addition to telling you which method is used to value your car, your insurance company must also provide you with an itemized list showing all additions, deductions, and sales tax applicable to your vehicle.

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15. Can my insurer deduct for any damage or rust to my vehicle which existed before the loss?

Yes. However, deductions for previous damage or prior condition must be itemized with a specific dollar amount and are limited to the amount by which the resale value of the car is increased by the elimination of the previous damage or correction of the prior condition. In other words, if your car was damaged in a previous accident and you decided not to get it repaired, or if you neglected the condition of your car which resulted in the vehicle sustaining rust, your car would not be worth as much on the open market if you tried to sell it than it would be had you elected to repair the previous damage or maintain the car in good condition. The amount by which the resale value of your car increases by eliminating the previous damage, or correcting the prior condition, is the amount the insurance company can deduct from your total loss settlement.

As New Jersey does not have a law which specifies just how insurers can take deductions for previous damage or prior condition, the example below is provided solely for the purpose of giving you a better understanding of this concept to assist in your negotiations with the insurer.

Example - A quarter panel damaged prior to the covered accident which the insurer estimates will cost \$600 to replace may result in the following deductions:

If the vehicle is 1 and 2 years old - \$600 deduction for previous damage
If the vehicle is 3 and 4 years old - \$450 deduction for previous damage
If the vehicle is 5 through 7 years old - \$300 deduction for previous damage
If the vehicle is over 7 years old - \$150 deduction for previous damage.

16. I found a car just like mine that costs more than what I got from the insurance company for my old car. What can I do?

Provided you have located a substantially similar vehicle within 30 days from receiving the company's settlement check, your company will have to either:

- Pay you the difference between the cost of the car that you found and the amount of the claim settlement.
- Negotiate the purchase price of the car that you found.
- Locate a substantially similar vehicle within a 25 mile radius of your vehicle's principle place of garaging which you can purchase at the market value established by the company in their original offer of settlement.
- Invoke the Appraisal Clause of your policy. ([See Question 20](#))

17. Does my insurer have to give me the option to keep my car after they have declared it a total loss?

No. Once they settle a total loss, your insurance company assumes the rights to your car and can dispose of it however they wish including selling it or its parts for salvage. They can, at their discretion, let you keep the car and let you try to salvage it yourself.

If the insurer lets you keep your car, they will deduct its salvage value from your total loss settlement before applying your deductible.

18. If the insurer settles my total loss and lets me keep the car, can I use the settlement money to fix it instead of selling it for salvage?

Yes. However, if your vehicle was manufactured 8 or fewer years from the current model year, you must first obtain a salvage certificate from the [New Jersey Motor Vehicle Commission \(MVC\)](#).

After the repairs are made, the vehicle must then be presented to the MVC for a special inspection before it can be driven on public roads.

19. Does my insurance company have to pay off my car loan?

No. The insurance policy only requires the company to pay the actual cash value of the vehicle less your deductible. If your car's value is less than the loan, you are still responsible for the difference.

Keep in mind that if your lender is listed as a loss payee on your policy (which is normally the case) the settlement check will be made out to them as well as to you.

20. What if my company and I can't agree on the amount of my loss?

If you and your insurer can't agree on the amount of your physical damage loss either one of you may request an appraisal as explained in your policy. Here is how the appraisal process usually works:

- You choose and pay for an appraiser to represent you.
- The company will choose and pay for an appraiser to represent them.
- The two appraisers will select a neutral third party umpire (for whom you and your company split the cost, if necessary).
- Both appraisers will give their estimates for the loss.
- If the appraisers can't agree, they will submit their differences to the umpire and a decision by any two of the three is binding.

21. Must I conclude my claim within a certain time frame?

Yes. You must either accept a final settlement or file a lawsuit within the time period specified by the appropriate statute of limitations.

If you fail to accept a final settlement offer or to file a suit before the statutory period runs out, you may jeopardize your right to receive any settlement at all.

22. What else can I do if my insurance company and I can't agree, or if they deny my claim?

You can file an appeal with the insurance company's internal appeals panel. If you are still unsatisfied after the company's internal appeals panel renders its decision, you can request a review of that decision by the Insurance Claims Ombudsman.

You can file a written complaint with:

The Office of the Insurance Ombudsman
NJ Department of Banking and Insurance
20 West State Street
PO Box 472
Trenton NJ 08625-0472
1-800-446-7467
E-mail: ombudsman@dob.nj.gov

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If you have any further questions or would like additional information, you can contact the Department of Banking and Insurance either through the **Office of the Insurance Claims Ombudsman** at 1-800-446-7467 or the [Consumer Inquiry and Response Center \(CIRC\)](#) at 609-292-7272.



**OPRA | Open
Public Records Act**

give the public greater access to government records maintained by public agencies in New Jersey.



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New Jersey Department of Banking and Insurance

Understanding your auto claim



DIFP
Department of Insurance
Financial Institutions &
Professional Registration

Filing a claim

Immediately notify the police of an accident that damaged other's property or if you were the victim of a hit-and-run accident, uninsured motorist, vandalism or theft.

Report your accident or the circumstances that will cause you to file a claim with your insurance company or agent/producer. If you were not at fault, report the accident to the other driver's insurance company. Follow the company's instructions when making your claim. According to Missouri statute section 375.1007(4) RSMo and Missouri regulation 20 CSR 100-1.050, insurance companies are required to handle claims promptly and fairly.

If you are in an accident with an uninsured motorist, notify your own carrier, and a report should be made to the Missouri Department of Revenue if:

- The accident happened in Missouri
- One year has not passed since the accident happened
- Someone involved in the accident did not have liability insurance coverage

AND

- There is damage to any one or more person's property in excess of \$500; or there was personal injury or death

You may obtain a state "Uninsured Accident Report" form from any branch of the Missouri Department of Revenue or State Highway Patrol.

Missouri Department of Revenue
301 W. High St., Room 470
Jefferson City, MO 65101
(573) 751-7195

You can contact the State Highway Patrol General Headquarters by calling (573) 751-3313.

Understanding your claim

What is physical damage?

Physical damage insurance typically is the comprehensive and collision coverage on your vehicle.

Comprehensive insurance pays for damages to your car from perils such as fire, theft, explosion, windstorm, hail, vandalism, glass breakage, birds, and animals. Covered perils are listed in your policy under the insuring agreements section. This coverage may have no deductible, a \$100 deductible, a \$250 deductible, or more. The deductible is the amount of any loss you must pay before the insurance company will cover damages.

Collision insurance covers damage caused by the collision of your car, regardless of who is responsible for the accident. This type of insurance usually includes a deductible. Again, you pay the deductible amount when you have an accident, and the insurance company pays the rest, up to the limits of your policy.

What is diminished value?

Diminished value is the difference in fair market value of the auto immediately before the accident and the auto immediately after the accident causing the damage. Diminished value may or may not be recoverable under an auto accident claim depending on the relationship between the injured party and the insurance company.

If you make a claim under your own policy (e.g. your auto was damaged because you hit a tree), Missouri law does not require insurers to pay for diminished value and there is case law that addresses this issue - Lupo v. Shelter Mutual Insurance Company, 70 S.W.3d 16. In this case, an insured brought action against his own insurance company to recover the diminished value of his adequately repaired car. The insured claimed that his car was worth less than it was before the accident even though the car had been properly and adequately repaired. The court ruled in favor of the insurance company, the insured appealed and the appeals court agreed the insured's auto policy **did not** require his insurance company to pay for the diminished value of an adequately repaired car. The law does not prohibit an insurer from offering this type of coverage, so it is always best to read your policy or ask your agent to find out whether your policy will pay you for diminished value claims.

If you make a claim under someone else's policy (e.g. your auto is damaged because someone else hit you), Missouri courts have included diminished value as recoverable damages - Rook V. John F. Oliver Trucking Company, 566 S.W.2d 200 (Mo. App. 1977). In this case, the court said the amount of damage should be measured from the fair market value immediately before the collision and the fair market value immediately after the collision. However, if repairs have been made to the auto as a result of the accident, the court said that the diminished value should be the difference between the fair market value immediately before the collision and the fair market value after the repairs.

What is Actual Cash Value?

The insurance company is required to pay the fair market value of a vehicle. The fair market value of your vehicle can be found by surveying dealers in your area, receiving information from recognized groups such as "CCC", "ADP AutoSource", or one of the industry guides, such as "NADA" to determine the average retail price. When disputing the company's offer of settlement, it is up to you to prove that your vehicle is worth more than what the company is offering.

The insurance company will adjust the value based on physical wear and tear as well as any pre-existing damage. If the company determines some replacement items are better than the ones damaged, they may apply "betterment." Betterment is an improvement that increases the value of property and is more extensive than mere repairs. You would be responsible for those charges. For example, if the tires are damaged or the battery or mechanical parts must be replaced, the company may replace new for old. The betterment would depend on the age of the older item being replaced.

What is Mitigation?

Mitigate means to minimize. Regardless of insurance, you have an obligation to mitigate the damages in a loss according to Missouri courts. As such, you have an obligation to keep your expenses to a minimum. For example, you may have to move your vehicle from storage to a neutral location, such as your home, until the insurance dispute is settled.

New parts or after-market parts?

Missouri regulation 20 CSR 100-1.050(2)(D)2 allows companies to use aftermarket parts when completing an estimate for repairs on your damaged vehicle.

A company is not obligated to put new factory parts on damaged vehicles. After-market parts are typically defined as “parts not manufactured by the original equipment manufacturer that replace non-mechanical sheet metal parts or plastic parts that constitute part of the exterior of a motor vehicle, including, but not limited to, an inner or outer panel.”¹ In accordance with the regulation, all after-market parts installed on the vehicle must be clearly identified on the repair estimate. Used parts, as well as after-market parts, are acceptable in the repair of vehicles if certain criteria are met.

Estimates

The insurance company is obligated to pay for repairs “in an amount for which it may be reasonably expected the damages can be satisfactorily repaired.”

It is common for insurance companies to review estimates submitted for repairs. However, you are the only one that can authorize repairs to your vehicle. Therefore, you can take your car to a body shop of your choosing, but if the insurance company has a lower estimate from another body shop, then the lower amount is all the insurance company is obligated to pay.

According to Missouri regulation 20 CSR 100-1.050 (2)(E), when the insurer elects to repair and designates a specific repair shop for automobile repairs, the insurer shall restore the vehicle to its condition prior to the loss at no additional cost to the claimant, other than as stated in the policy and within a reasonable period time.

What about rental re-imbursement and/or loss of use?

Many companies offer an endorsement that you may purchase to cover rental re-imbursement costs that you may incur in the event your car was damaged. For **theft claims**, Missouri regulation 20 CSR 500-2.100 provides minimum standards for rental reimbursement under theft coverage. The maximum waiting period before coverage begins is forty-eight hours. The minimum payment is ten dollars per day or three hundred dollars per rental occurrence. The insurer may terminate these payments when they extend a reasonable settlement to the insured.

In the event another party was responsible for the accident (someone else hit your car), common liability language states that a company will pay for the damages in which their insured becomes legally liable, including the loss of use of your car. The insurance company will determine if you have actually suffered a loss. If a claimant does not rent a vehicle, some companies will offer a small amount per day to help absorb expenses

¹ www.asashop.org/legis/disclosure.htm

such as public transportation, getting rides from friends or family, etc.

What is comparative fault?

In 1983, the Missouri Supreme Court adopted the rules of pure comparative fault. This means that any parties involved in an accident may be partially responsible for the accident, and allows your damages to be reduced by the percentage you are at fault in the accident. Insurers are allowed to investigate an accident and make a decision as to the percentage of fault of all parties involved. They will make voluntary offers based on this opinion.

What about salvage?

Missouri statutes define “salvage vehicle” as any motor vehicle or semitrailer, which has been damaged to the extent that the total cost of repairs to rebuild the vehicle to its condition immediately before it was damaged exceeds 80% of the fair market value of the vehicle prior to the damage. (Fair market value is described on page 5 under Actual Cash Value) The total cost of repairs to rebuild or reconstruct the vehicle shall not include the cost of repairing, replacing, or reinstalling inflatable safety restraints, tires, sound systems or any sales tax for parts or materials to rebuild the vehicle.

What is first-party liability?

A first-party liability claim is when you make a claim against your own insurance policy. The claim payment is based on contractual agreements or provisions in your policy.

What is third-party liability?

A third-party liability claim is when you make a claim against someone else’s policy.

Typical policy language states that the insurer will pay for damages for which the insured becomes legally liable. Some damages may include loss of use if the vehicle requires repair. Insurers will pay reasonable costs for vehicle rental, bus fares, etc., to the third-party claimants. The company will usually terminate these payments when a reasonable settlement offer is extended to the claimant.

What are bodily injury considerations?

Once a company has determined responsibility in an accident, they will gather information in order to extend a fair settlement offer.

Companies will take several factors into consideration when offering the settlement. They will review all reasonable medical expenses, lost wages, degree of injury and long-term effects. At this time there is no law to force companies to include pain and suffering in the settlement offer.

Although the Missouri Department of Insurance cannot force a company to pay a bodily injury claim, the department has the authority to ensure the company performs a thorough investigation.

Depending on the circumstances involved in the accident, it may take a while for the insurance companies to determine liability and settle the claims. If you seek medical attention, Missouri law allows you to file accident-

related medical claims under your health insurance coverage for benefits applicable to your policy. Once the automobile insurer determines liability, the bodily injury payment is paid in addition to any benefit received. The bodily injury settlement is based on reasonable medical expenses and is separate from health insurance payments. Missouri law does not allow automobile insurance companies to subrogate (recoup their payment) from your health carrier and vice versa. Only self-funded health benefit plans are allowed to subrogate in Missouri.

The medical payments portion of some auto policies also provides immediate coverage for health services due to an auto accident rendered regardless of who is at fault. You should review the medical payments portion of your policy for coverage that may extend to the medical treatment.

How to contact the Missouri Department of Insurance, Financial Institutions & Professional Registration

For additional information contact the Consumer Insurance Hotline toll free at 1-800-726-7390 or go to <http://www.insurance.mo.gov>.

NOTICES

List of Approved Guide Source Method Vendors; Notice 2017-03

[47 Pa.B. 1254]
[Saturday, February 25, 2017]

Under the authority of the Motor Vehicle Physical Damage Appraiser Act (63 P.S. §§ 851—863), the Insurance Commissioner lists guide source providers approved to calculate the replacement value of total loss or unrecovered vehicles under 31 Pa. Code § 62.3(e)(1)(i) (relating to applicable standards for appraisal).

A listing of approved guide source method providers will be published annually in the *Pennsylvania Bulletin*. In the interim, an updated listing will be available on the Insurance Department's web site at www.insurance.pa.gov. Requests for this information may also be submitted to the Insurance Department, Bureau of Consumer Services, (877) 881-6388, fax (717) 787-8585, ra-insresponse@pa.gov.

Approved Guide Source Vendors

Accurate ACV, LLC
221 East 11th Street
Kansas City, MO 64106
(816) 291-4818
www.accuacv.com

Audatex (formerly ADP Claims Solution Group, Inc.)
15030 Avenue of Science, Suite 100
San Diego, CA 92128
(800) 237-4968
www.audatex.com

Autobid, Inc.
10965 Lowell, Suite 1007
Overland Park, KS 66210
(913)-825-4800
www.autobid.com

Automobile Red Book (including the Older Used Car
Publication)
Price Digests
9800 Metcalf Avenue
Overland Park, KS 66212
(800) 654-6776
www.pricedigests.com

CCC Information Services, Inc.
222 Merchandise Mart Plaza, Suite 900
Chicago, IL 60654-1105
(800) 621-8070
www.cccis.com

Mitchell International, Inc.
6220 Greenwich Drive
San Diego, CA 92122
(900) 238-9111
www.mitchell.com

NADA Official Used Car Guide (including the Older Used
Car Publication)
8400 Westpark Drive
McLean, VA 22102
(800) 544-6232
www.nada.com/b2b

Vehicle Valuation Services
1 South 450 Summit Avenue
Suite 185
Oakbrook Terrace, IL 60181
(888) 475-9975
www.vvsi.com

This document supersedes the notice published at 46 Pa.B. 6734 (October 22, 2016) and shall remain in effect until a subsequent notice is published in the *Pennsylvania Bulletin*.

TERESA D. MILLER,
Insurance Commissioner

[Pa.B. Doc. No. 17-352. Filed for public inspection February 24, 2017, 9:00 a.m.]

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**State of New York
Department of Financial Services**

It is hereby certified that the annexed copy of the letter dated October 24, 1995 from Christopher Maloney to Charles Jones at CCC Information Services Inc. re: New York State Insurance Department File No. C95001989 CCC Information Services has been compared with the original on file in this Department and that it is a correct transcript therefrom and of the whole of said original.



In Witness Whereof, I have hereunto set my hand and affixed the official seal of this Department at the City of New York, this 14th day of June 2021.

Martha A. Lees

**Martha A. Lees
Deputy Superintendent and
Senior Counsel for Insurance**



GEORGE E. PATAKI
Governor

STATE OF NEW YORK
INSURANCE DEPARTMENT
160 WEST BROADWAY
NEW YORK, NEW YORK 10013

EDWARD J. MUHL
Superintendent of Insurance

October 24, 1995

CCC Information Services Inc.
World Trade Center Chicago
444 Merchandise Mart
Chicago, Illinois 60654-1005
Att: Charles Jones, Group Vice President

Re: New York State Insurance Department File # C95001989
CCC Information Services Inc.

Dear Mr. Jones:

Based upon our review and representations by CCC Information Services Inc. (CCC), its computerized valuation system satisfies the criteria contained in Subdivision 216.7(c)(1)(iii) of the Fifth Amendment to Regulation 64. Therefore, CCC is approved as a computerized database that produces statistically valid fair market values for substantially similar automobiles.

CCC may begin providing such valuations on motor vehicle total losses to insurers for claims reported on and after November 8, 1995.

Very truly yours,

EDWARD J. MUHL
Superintendent of Insurance

By:

A handwritten signature in cursive script that reads "Christopher Maloney".

Christopher Maloney
Senior Insurance Examiner
Property & Casualty Ins. Bureau

cc: Martin Minkowitz, Strook, Strook & Lavan
Arthur J. Chartrand, Chartrand Law Office

EGENPL/1638/29

CONFIDENTIAL – SUBJECT TO JOINT DEFENSE

NOTICE

NEW HAMPSHIRE INSURANCE DEPARTMENT

List of Acceptable Valuation Guides and Methodologies In Accordance With Ins 1002.15 Determining Amount of Motor Vehicle Total Loss Claims

In accordance with Ins 1002.15 (a) (1) b. the following is a list of accepted valuation guides and methodologies, along with the name and address of the vendor or provider of each. These valuation guides and methodologies have been accepted by the New Hampshire Insurance Department as the only such guides for insurers to use in determining total loss settlements based on a motor vehicle's fair market value [Ins 1002.15 (a) (1)].

Accepted Guides and Methodologies

<u>Name of Product</u>	<u>Vendor's Name, Address and Contact Information</u>
Autosource Valuation	Audatex North America 15030 Avenue of Science, Suite 100 San Diego, CA 92128 (858) 946-1264 www.audatex.com
BlackBook	BlackBook PO Box 758 Gainesville, GA 30503 800-554-1026 http://www.blackbook.com
CARFAX	Total Loss Valuation Service 5860 Trinity Parkway Suite 600 Centreville, VA 20120 800-789-6232 www.carfaxbig.com
CCC ONE Valuation	CCC Information Services Inc. 222 Merchandise Mart Plaza, Suite 900 Chicago, IL 60654-1105 (800) 621-8070 (312) CCC-INFO (222-4636) www.cccis.com
NADA Guides	NADA Analytical Services Group 8400 Westpark Drive McLean, VA 22102 (800) 544-6232 www.nada.org

WorkCenter Total Loss	Mitchell International, Inc 6220 Greenwich Dr San Diego, CA 92122 (800) 238-9111 www.mitchell.com
Vehicle Valuation Services	Vehicle Valuation Services 1 South 450 Summit Avenue Suite 380 Oakbrook Terrace, IL 60181 (888) 475-9975 www.v-v-s.com

While the following vendor products do not qualify as an acceptable guide or methodology under Ins 1002.15(a)(1), they do provide information on loss valuation in accordance with other sections of Ins 1002.15. As such, insurers may also rely on them in their determination of total loss settlements.

<u>Name of Product</u>	<u>Vendor's Name, Address and Contact Information</u>
AutoBid	AutoBid Services 10965 Lowell Suite 1007 Overland Park, KS 66210 (800) 875-2217 www.autobid.com
Valu-Rite	DCI Solution PO Box 9186 Rapid City, SD 57709 (855) 324-5465 www.dcisolution.com

State of Connecticut Insurance Department

(/CID)

DJA0279


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- [Bulletins \(/CID/Bulletins/Current-List-of-Bulletins \)](#) >
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- [Complaints and Questions \(/CID/Consumer-Affairs/File-a-Complaint-or-Ask-a-Question \)](#) >
- [Consumer Alerts and Notices \(/CID/Lists/Consumer-Alerts-and-Notices \)](#) >
- [Dates and Deadlines \(https://www.catalog.state.ct.us/cid/portalApps/importantDate.aspx \)](#) >
- [Department Notices \(/CID/Public-Notices/Department-Notices \)](#) >
- [Mission & Divisions \(/CID/About-Us/Divisions \)](#) >
- [Enforcement Actions \(https://www.catalog.state.ct.us/cid/portalApps/EnforcementAction.aspx \)](#) >
- [Forms and Applications \(/CID/Library/Forms-and-Applications \)](#) >
- [In The News \(/CID/Commissioner/In-The-News \)](#) >
- [Laws and Regulations \(/CID/Legal-Division/Laws-and-Regulations \)](#) >
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- [What Is Auto Insurance \(/CID/General-Consumer-Information/What-Is-Auto-Insurance \)](#)
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- [What Affects Premiums \(/CID/General-Consumer-Information/Auto-Insurance---What-Affects-Premiums \)](#)

- Teen Driving and Insurance (/CID/General-Consumer-Information/Teen-Driving-and-Insurance)
- Automobile Arbitration Program 
- General Auto Coverage Information (/CID/General-Consumer-Information/Automobile-Coverage-Information)
- Steer Clear of Deer (/CID/General-Consumer-Information/FAQs---Steer-Clear-of-Deer)
- FAQs - Regarding Repairs to Your Vehicle (/CID/General-Consumer-Information/FAQs-Regarding-Repairs-to-Your-Vehicle)
- **Other Automobile Industry Sources Approved by the Insurance Commissioner:**
 1. **Automobile Red Book—Prism Business Media, Inc.**
9800 Metcalf Avenue, Overland Park, KS 66282-2901
(800) 654-6776
www.pricedigest.com (<https://pricedigests.com/>)
 2. **Mitchell International, Inc.**
9889 Willow Creek RoadSan Diego, CA 92131
(800) 854-7030
www.mitchell.com (<https://www.mitchell.com/>)
 3. **CCC Information Services, Inc.**
222 Merchandise Mart, Suite 444Chicago, IL 60654-1005
(800) 621-8070
www.cccis.com (<https://www.cccis.com/>)
 4. **Audatex North America, Inc. (formerly ADP)**
Bishop Ranch 1, 6111 Bollinger Canyon Road, Suite 200San Ramon, CA 94583
(925) 866-1100
www.audatex.us (<http://www.audatex.us/>)
 5. **AutoBid Services, LLC.**
10955 Lowell suite 1007, Overland Park , KS 66210
(800) 875-2217
www.autobid.com (<https://autobid.com/>)
 6. **Vehicle Valuation Service** (specialty type only)
450 Summit Avenue, Suite 185 Oakbrook Terrace, IL 60181
(888) 475-9975
www.vvsi.com (<http://www.vvsi.com/>)
 7. **DCI Solutions** (specialty type only)
P.O Box 9186, Rapid City, SD 57709

THE STATE OF WYOMING

Mark Gordon
Governor



Jeffrey P. Rude
Commissioner

Insurance Department

106 East 6th Avenue • Cheyenne, Wyoming 82002

July 12, 2021

Kevin P. Zimmerman, Esquire
Baker Hostetler
200 Civic Center Drive, Suite 1200
Columbus, OH 43215-4138


Re: Certification of Copy of Public Record

Dear Mr. Zimmerman,

Per our discussion of today's date, enclosed please find the certified copy of a public record regarding the letter dated October 9, 2021 signed by Roy A. Lesh regarding CCC Information Services, Inc. (CCC).

If you have any questions regarding the enclosed information, please let me know.

Sincerely,

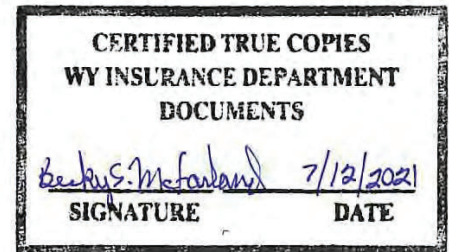

Becky S. McFarland
Staff Attorney



THE STATE



OF WYOMING

JIM GERINGER
GOVERNOR*Insurance Department*HERSCHLER BUILDING - 122 WEST 25TH STREET - CHEYENNE, WYOMING 82002

October 9, 2001

Arthur J. Chartrand
Attorney at Law
Chartrand Law Office
130 North Cherry, Suite 202
Olathe, Kansas 66061

Re: CCC Information Services, Inc. (CCC)

Dear Mr. Chartrand:

Thank you for your September 19, 2001 correspondence regarding CCC's continued service and compliance in Wyoming.

As you are aware, WY HB 96(effective 1/02) reads in part: "the actual retail cash value of the motor vehicle, as set forth in the most current edition of any nationally recognized automobile appraisal guide or other source approved by the Wyoming insurance department." I would agree that the passage of HB 96 does not change CCC's status, but the language of the bill would seem to indicate that some type of acknowledgment of approval would be in order from our department.

This letter will serve as a positive response to CCC's continued use by insurers in determining a fair retail value for the consumers of Wyoming that may suffer a total loss to their vehicle. Our position as concerns total losses is that a single source may be used if the offer is accepted without dispute. If a dispute arises, an additional market survey in conjunction with a nationally recognized automobile guide may have to be researched in the geographical location of the insured or claimant. I only mention this point as claims people in Wyoming understand what we expect in reaching agreement with a consumer and that more than one source may be required in determining a fair actual retail cash value.

CCC may continue to service insurers in assessing vehicles relative to the market demands as indicated in the State of Wyoming.

Regards,

Roy A. Lesh
Insurance Standards Consultant

RAL/krv

cc: Nancy Olson - Client Rights Representative
Stephanie Bryant - Staff Attorney

Frequently Asked Questions

[New Car](#) **[Used Car](#)** [My Car's Value](#) [Instant Cash Offer](#) [Motorcycle](#) [Other Pricing](#)

Used Car

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[What is Fair Market Range for used cars?](#)

[What is Typical Listing Price?](#)

[What is Kelley Blue Book Typical Listing Price \(Certified Pre-Owned\)?](#)

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[Does Kelley Blue Book provide escrow services for vehicle purchases or guarantee online vehicle purchase transactions?](#)

[I'm not in the United States. Can I still get a Used Car Report?](#)

[Do you still sell the printed editions of Kelley Blue Book?](#)

[What do the abbreviations on your site mean?](#)

What Is The Kelley Blue Book® Fair Purchase Price For Used Cars?

This is the price that Kelley Blue Book has determined people like you are typically paying a dealer for a used car with typical mileage in good condition or better. This price is based on actual used-car transactions and adjusted regularly as market conditions happen to change.

What Is Fair Market Range For Used Cars?

The Fair Market Range is Kelley Blue Book's estimate of what you can reasonably expect to pay this week for a vehicle with typical mileage and options (or with the miles and options you specify), excluding taxes, title and fees when purchasing from a dealer. Each dealer sets and controls its own pricing.

What Is Typical Listing Price?

Formerly known as Suggested Retail Price, the Kelley Blue Book Typical Listing Price is representative of dealers' asking prices. It assumes that the vehicle has been fully reconditioned and has a clean title history. This price also takes into account the dealer's profit, costs for advertising, sales commissions and other costs of doing business. The final sale price will likely be less depending on the vehicle's actual condition, popularity, type of warranty offered and local market conditions. In other words, it's the price you should expect a dealer to ask – not always the price you should pay.

What Is Kelley Blue Book Typical Listing Price (Certified Pre-Owned)?

Formerly known as the Certified Pre-Owned (CPO) Price, the Kelley Blue Book® Typical Listing Price (CPO) is representative of dealers' asking prices for a used car covered by the manufacturer's warranty in its CPO program. It assumes that the vehicle has been fully reconditioned and has a clear title history. The price also takes into account the dealers' profit, costs for advertising, sales commissions and other costs of doing business, while also factoring in any value associated with the CPO program.

For most vehicles, CPO coverage typically increases market value between \$1,000 and \$2,000. The final sale price may vary according to the vehicle's actual condition, popularity, type of warranty offered and local market conditions. In other words, it's the price you should expect a dealer to ask – not always the price you should pay.

How Often Do You Update Your Used Car Values And Pricing?

We update or verify Trade-In Values, Private Party Values and the used car Fair Purchase Price at least once a week. However, an update doesn't necessarily mean that every vehicle will change in value. The values we provide are based on several factors including the current marketplace conditions and trends, which can vary widely.

How Does Mileage Affect A Car's Price Or Value?

Kelley Blue Book employs a team of statisticians who analyze millions of transaction records to determine the typical mileage of a vehicle based on its age and time spent on the road. The typical mileage for a particular car changes regularly based on the data in our transaction records. If a vehicle's mileage is higher or lower than the typical mileage, we adjust its value up or down accordingly.

Does Your Used Car Pricing Account For My Region?

Yes. Kelley Blue Book understands the importance of providing pricing that is geographically relevant to consumers and dealers. In order to better meet the needs of the industry, we produce values based on 134 geographic regions in the US. Each region is analyzed individually to reflect local pricing and local economic conditions.

Do You Have Canadian Pricing?

Yes. Pricing and other info on KBB.com is specific to the U.S., but in 2020, Kelley Blue Book started providing data for the Canadian market. Canadian pricing will follow soon and will be adjusted for each province & territory to reflect local economic and market conditions. You can find KBB Canada at [KBB.ca](https://www.kbb.ca).

Remember that vehicles sold in Canada (and other countries) often differ from their U.S. counterparts in engine spec and optional equipment.

Do You Have Pricing For Other Countries?

Pricing and other info on KBB.com is specific to the U.S., but Kelley Blue Book also operates websites specific to these other countries:

- Brazil – [kbb.com.br](https://www.kbb.com.br)
- Canada – [kbb.ca](https://www.kbb.ca)

In addition, Kelley Blue Book data and valuations can be found on websites in these countries.

- Australia – [kbb.com.au](https://www.kbb.com.au)
- China – [jingzhengu.com](https://www.jingzhengu.com)

Remember that vehicles sold in other countries may look the same as their U.S. counterparts, but often contain significant differences in engines, safety standards and optional equipment.

If you just want a general idea of pricing for a country where we don't offer values, you can look up a vehicle in our Western region – and, of course, convert from U.S. dollars to your country's currency. Use the ZIP

code 92618. Keep in mind that since vehicles can vary significantly from country to country, it's tricky to

compare prices internationally.

As we continue to offer more global websites, we will pass the info on to you via KBB.com.

Does Kelley Blue Book Provide Escrow Services For Vehicle Purchases Or Guarantee Online Vehicle Purchase Transactions?

No. Kelley Blue Book does not participate in new or used vehicle transactions. Read more about protecting yourself from online fraud. [More](#)

I'm Not In The United States. Can I Still Get A Used Car Report?

Kelley Blue Book information is based on cars originally sold in the United States that are now being bought or sold in the United States. You can get a report, but you'll have to enter a U.S. ZIP code, since regional factors affect the values.

Do You Still Sell The Printed Editions Of Kelley Blue Book?

No. For over 90 years, Kelley Blue Book published *Used Car Guides* providing values for used cars and trucks. For over 40 years, Kelley Blue Book published the *Motorcycle Guide*, but in 2017, we published our last printed book. These decisions are never easy.

The good news? If you need to get the value of your current car or are interested in what you should pay for your next car, you can still find 21 years of new and used car pricing right here on [KBB.com](#). In addition, we also offer values for [motorcycles](#) and ATVs.

If you would like to learn about other options to receive Kelley Blue Book® Values, or have any questions, please call KelleyKare at (800) 258-3266.

What Do The Abbreviations On Your Site Mean?

(□) – This bullet-symbol indicates the model(s) for which this line item is listed. Loosely, “Available for this price on... □ LS, GS, etc.”

(*) – The asterisk is used as the wildcard symbol. It is a place holder to signify any missing character. For example, D*B means D(any letter here)B.

2D – Two Door

4D – Four Door

5D – Five Door

2WD – Two-Wheel Drive

4WD – Four-Wheel Drive

6-CYL – Six-Cylinder Engine

8-CYL – Eight-Cylinder Engine

ABS – Anti-lock Braking System

AWD – All-Wheel Drive

CID – Cubic Inches Displacement

CVT – Continuously Variable Transmission

DOHC – Dual Overhead Cam

DRW – Dual Rear Wheels

DSL – Diesel

EFI – Electronic Fuel Injection

FFV – Flexible Fuel Vehicles

GVWR – Gross Vehicle Weight Rating

HO – High Output Engine

HP Turbo – High Performance Turbo

LP – Low Pressure Engine

MFI – Multitport Fuel Injection

MSRP – Manufacturer's Suggested Retail Price

N/A – listed in the description text means that the item is Not Available. There is usually text describing the circumstances.

N/A – listed in the pricing columns means that at this time the pricing information is Not Available.

N/C – means that there is No Charge for this item.

PFI – Port Fuel Injection

PIO – Port Installed Options

PZEV – Partial Zero Emissions Vehicle

SFI – Sequential Fuel Injection

SOHC – Single Overhead Cam

SPRCHG – Supercharged Engine

SRW – Single Rear Wheels

SULEV – Super Ultra-Low Emission Vehicle

TG – Turbo Gas (fuel type)

Turbo – Turbocharged Engine

ULEV – Ultra Low Emissions Vehicle

V – Valve

V6 – Six-Cylinder Engine

V8 – Eight-Cylinder Engine

VTEC – Variable Timing and lift Electronic Control system

Visit Kelley Blue Book's website for more information.

Contact Us

Business Inquiries

[b2b.kbb.com](https://www.kbb.com/b2b)

Mailing Address

195 Technology, Irvine, CA 92618

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Frequently Asked Questions

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My Car's Value

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[What are Trade-in Values?](#)

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[What is the Kelley Blue Book® Instant Cash Offer?](#)

[How is an Instant Cash Offer different from Trade-in Range?](#)

[Is it better to trade in my car or sell it myself?](#)

[How do I determine what condition my current car is in?](#)

[My car has air conditioning, but it's broken; do I still check the box marked AC?](#)

[Can I sell my car on your site?](#)

[My car has a salvage title. How does that affect the value?](#)

[What about the value of equipment on my car that you don't have listed?](#)

[Why don't you value aftermarket equipment?](#)

I purchased my car outside the US, but it is now registered here. What's the value of it?

I totaled my car. How will the insurance company determine what it was worth?

My car is more than 21 years old. How do I find its value?

Why doesn't Kelley Blue Book list trade-in values, private party values, or a used car Fair Purchase Price for Lotus, Ferrari, Bentley, etc.?

I bought a new car a few months ago and I would like to check its used value. When will it be listed?

What is the difference between the Trade-In Value I see on your site and the Blue Book® Lending Value?

How Can I Get The Value Of My Car On A Past Date?

Occasionally we get a request for the value of a particular vehicle at a particular date in history. This request may be for litigation, estate planning, taxes, etc. The fee for a Valuation Certified Report is \$35 per value. To request a Valuation Certified Report, please contact Customer Service at 1-800-258-2005, option 2. This service usually has a turnaround time of 3-5 business days. We usually send the Report via email, but we can also mail it if requested.

How Do I See The Blue Book® Value For My Vehicle?

To get to the value for your car, navigate the path to the Blue Book Trade-In and Private Party Values:

- On the home page or under "Car Values" from the top navigation, select "My Car's Value".
 - Tell us the year, make, model and mileage of the car you own (2015> Honda> Civic>30000 miles). Verify the ZIP code.
 - Choose your car's category (sedan vs wagon) and style (DX, EX, LX). Note: Many vehicles only come in one category, but most vehicles are sold in more than one style, which some sites call "trim". Whatever you call it, these are pre-packaged levels of equipment – and they definitely affect the price or value of a car.
 - Add any additional equipment or options (packages, alloy wheels, moon roof, premium sound, etc.)
 - Choose what you're most likely to do – Trade In to a Dealer or Sell to a Private Party.
 - Tell us the car's condition (Excellent, Very Good, Good, or Fair) or, if you're not sure, take the Condition Quiz. Most cars we see are in "Good" condition.
 - View the Blue Book Value based on your ZIP code and your car's age, mileage, equipment, and condition.
-

What Are Trade-In Values?

Trade-In Value is what you can expect to receive for your current car when trading it in at a dealer, assuming you've chosen the accurate condition. (Most people overestimate the condition of their car. As a reference, most of the cars we see are in "Good" Condition.) The Trade-in Value presupposes that you're buying another vehicle from the same dealership. The Trade-in Value will be less than the Private Party Value because the reselling dealer has to pay to recondition the car, perform safety inspections and incur other costs of doing business.

What Is The Trade-In Range?

The Trade-in Range is an estimate of what you can reasonably expect to receive for a vehicle with the miles and options you specify, when trading in the car at a dealer. It generally presumes that you will buy another car from the same dealer.

What Are Private Party Values?

Private Party Value is what a buyer can expect to pay when buying a used car from a private party. It may also represent the value you might expect to receive when selling your own used car to another private party. The Private Party Value assumes the vehicle is sold "As Is" and carries no warranty (other than the continuing factory warranty, if any). The final sale price may vary depending on the vehicle's actual condition and local market conditions. This value may also be used to derive the vehicle's value for insurance and vehicle donation purposes.

What Is The Kelley Blue Book® Instant Cash Offer?

The Kelley Blue Book® Instant Cash Offer is a real offer for a specific amount to purchase a consumer's car or apply the amount toward another car. The Offer is valid for 3 days (not counting Sundays) and can be immediately redeemed during business hours at any Participating Dealer, pending inspection. It is based on specific elements of the consumer's car, like installed options, specific condition (such as dents and mechanical issues) and local market demand.

How Is An Instant Cash Offer Different From Trade-In Range?

The Kelley Blue Book® Instant Cash Offer is:

- A fixed offer applied toward your next car purchase or used to sell your current car to a Participating Dealer (pending inspection)
- Valid for 3 days (not counting Sundays)
- Based on specific details related to the condition and features of your car, like installed options, dents, mechanical issues, and local market demand

The Kelley Blue Book® Trade-In Value is:

- An estimated trade-in value used toward the purchase of another car only
 - Updated weekly
 - Applied to similar cars of the same year, make, model, style and general condition
 - The general value Kelley Blue Book estimates consumers can expect to negotiate this week based on the style, condition, mileage and options of the vehicle when they trade it in to a dealer, however every dealer is different and values are not guaranteed
-

Is It Better To Trade In My Car Or Sell It Myself?

This is a question of personal preference. When you trade a car in, the dealer must then absorb the cost of making the vehicle ready for sale, reconditioning, advertising, sales commissions, arranging financing and insurance and standing behind the vehicle for any mechanical or safety problems. You may get more for your car if you sell it yourself, but you need to consider the value of your time, the aggravation of performing at least some of the above tasks to get the vehicle into a suitable resale condition and the liability of making appointments and giving a test drive. See more about Selling vs. Trading in our [Advice Section](#).

How Do I Determine What Condition My Current Car Is In?

We know you're not an expert, but you also know your car best. Just be as honest with yourself as possible. Most people tend to overestimate the condition of their car. To help out, we post the percentage of vehicles we value that match each condition. For example, if only 3% of the vehicles in the market are considered "Excellent" condition, chances are that your car isn't one of them. If you aren't sure, take our condition quiz.

My Car Has Air Conditioning, But It's Broken; Do I Still Check The Box Marked AC?

Yes. But in fairness, you would need to deduct the cost to repair the broken equipment from the total vehicle price. There is one exception: when the cost of the repair is higher than the value of the broken item, it's best not to include that item in the list of optional equipment.

Can I Sell My Car On Your Site?

Yes. As private party, you've got the same opportunity as a dealership: to reach millions of serious car shoppers with a listing on KBB.com and Autotrader. To create, purchase and post your car's classified ad, [get started here](#).

My Car Has A Salvage Title. How Does That Affect The Value?

A salvaged, reconstructed or otherwise "clouded" title has a permanent negative effect on the value of a

vehicle. The industry rule of thumb is to deduct 20% to 40% of the Blue Book® Value, but salvage title vehicles really should be privately appraised on a case-by-case basis in order to determine their market value.

What About The Value Of Equipment On My Car That You Don't Have Listed?

There are some options (e.g., rims, alarm systems, heated seats, trip computers) that are not addressed on our site. Most of these are dealer-installed or aftermarket. These items don't have a consistent or reportable added value in the used marketplace. That is not to say that such options are worthless as they may make your vehicle more marketable against similar models; however we do not address options when there is not a consistent value to report.

Why Don't You Value Aftermarket Equipment?

This can be confusing for a lot of people: "Why do you show a luggage rack as optional, but not the ski rack I installed myself?" We only value items which are either factory-installed or "factory quality." There is a tremendous variation in something like rims, so it would be impossible to list – and report values for – all the different options. Space does not allow us to identify the vast variety of aftermarket items.

I Purchased My Car Outside The US, But It Is Now Registered Here. What's The Value Of It?

The values you see on KBB.com only apply to vehicles sold in the United States, but we do maintain sites in Canada and Brazil to supply the values for those markets. Cars imported through sources other than factory authorized distributors are considered gray market vehicles and may have substantially lower used car values because the conversion to U.S. specification is performed by aftermarket companies, not the factory. Kelley Blue Book does not address gray market vehicles; therefore yours may have to be privately appraised.

I Totaled My Car. How Will The Insurance Company Determine What It Was Worth?

Policies vary quite a bit, but generally, insurance adjusters try to determine the value for a vehicle that has been totaled as somewhere between Wholesale and Retail. They may also research comparable vehicles that have sold in your area to help determine a fair price. You could average the Trade-In Value with the Typical Listing Price of your vehicle and use the resulting value as a reference point for determining the vehicle's value. Please note that insurance companies do not have any obligation to use Kelley Blue Book

pricing to determine replacement values. Insurance companies use Kelley Blue Book as a reference but will set their own policies as to which values they use.

My Car Is More Than 21 Years Old. How Do I Find Its Value?

Kelley Blue Book provides values for used vehicles up to 21 years old. Transactions for older vehicles are too rare, therefore we don't have enough data to analyze and are unable to report values for them. If you have questions, please contact our Customer Service Department at 1-800-258-2005, option 2.

Why Doesn't Kelley Blue Book List Trade-In Values, Private Party Values, Or A Used Car Fair Purchase Price For Lotus, Ferrari, Bentley, Etc.?

Kelley Blue Book reports vehicle values by analyzing actual transactions in the market. We do not believe in using arbitrary formulas to predict prices because our promise is to report dependable values, not set prices. Kelley Blue Book does not currently offer certain values for these exotics or low-volume vehicles since they are seldom seen in the market and can vary widely in value. Low-volume and exotic vehicles should be privately appraised to establish a trade-in or private party value.

I Bought A New Car A Few Months Ago And I Would Like To Check Its Used Value. When Will It Be Listed?

Kelley Blue Book reports vehicle values by analyzing actual transactions in the market. We do not believe in using arbitrary formulas to predict prices because our promise is to report dependable values, not set prices. It can be difficult to establish used values on newer vehicles if we have not seen enough transactions in the required amount of different markets to establish dependable values on these vehicles.

What Is The Difference Between The Trade-In Value I See On Your Site And The Blue Book® Lending Value?

The Trade-In Value on our site supposes that the vehicle is in fair, good, very good or excellent condition and is taken in by the dealer AS IS. The Blue Book® Lending Value, which is intended for use by the wholesale industry, factors in the Trade-In Value of the vehicle plus the cost associated with reconditioning the vehicle to the manufacturer's specifications and performing all required safety checks to make it ready for sale. In other words, while Trade-In Values vary depending on the condition of the vehicle, Blue Book Lending Values

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Business Inquiries

b2b.kbb.com

Mailing Address

195 Technology, Irvine, CA 92618

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NADAguides Frequently Asked Questions

Values and Pricing

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Does or will NADAguides provide any values for converted electric vehicles in the used car category?

Does NADAguides use a depreciation schedule to determine depreciation percentage rate per year?

Vehicle book value: Cars, Motorcycles, RVs & Boats -- what are the basics of values?

How do I value a salvage title?

What are the definitions for the valuations listed for Autos, RVs, Boats, Motorcycles and Classic Cars?

What is included within the price when adding the Snow Plow Pkg. /Plow option?

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Do all vehicles automatically drop in value when a new model year is released in September?

Why is my vehicle value on the site far below sale prices in my area?

Does NADAguides value rebuilt or replaced components?

Does the MSRP price of a vehicle include the listed cost of the vehicles engine?

I have extremely low mileage on my older model year vehicle. Why do your values seem so low?

What is considered when appraising a vehicle?

NADAguides collects data from more than 1.5 million vehicle transactions each month. That's more data than any other provider. Our longstanding alliances with a range of top industry sources, manufacturers and dealers make it possible.

The NADAguides database grows every day with these inputs, plus others:

- Auction transactions
- Retail sales data
- Asking prices from classified listing sites

NADAguides has a strong history of collecting the most comprehensive industry data whether it be automotive, RV, motorcycle, boats, etc. Because we've been gathering it for so long, we've built the industry's most robust data archive. This information forms the foundation for the NADAguides values. Our team leverages the latest technology, deep knowledge of each segment's market, statistics, analytics and econometrics to derive our values.

We continually build on our inputs, knowledge and process in order to provide the best insight - and the best value to your business.

Are the values shown in U.S. or Canadian funds?

All values shown are in U.S. funds. Our analysts review sales transaction data for publishing U.S. values only. We do not have any relationships with any data sources in Canada and the support for valuing Canadian business transactions is minimal. The size of the country and the volume created in the country is fairly small.

Where can I find values for a vehicle that is being imported from another country?

Countries outside of the United States do not collect vehicle sales data like we do which makes it difficult to provide values for these types of situations. Without data on transactions, values would not be accurate and merely just speculation. We DO export guidebooks to distributors but we are not aware of how they are being used on their end.

How do I obtain an archive (historical) value from a previous month or year?

NADAguides has an extensive reference library, and it offers archive values for automobiles, classic cars, powersports (motorcycles, ATVs, personal watercraft, and snowmobiles), manufactured homes, boats, and recreation vehicles. The fee for this service is \$100.00 per

archive value, and it must be prepaid.

Provided we have the necessary information in our reference library to complete your archive value request, processing time is within two business days. Archive values will be sent to you via email, fax, or mail.

If you are interested in obtaining an archive value, please email your request to information@nadaguides.com.

Do you provide values for Kit or Replica Cars?

No. Due to variations in building standards and quality, we do not list values on Kit or Replica Cars.

When will NADAguides.com have 2021 used vehicle values?

Vehicle values are developed by NADAguides market/data analysts, based on many sources of information including reports of actual transactions. In order to determine a value for any given vehicle, there must be enough used sales transactions in the marketplace. Vehicles and vehicle options are valued throughout the year, as information becomes available.

Are the used car values on the website based on actual sales? And is the clean retail price a typical dealer asking price or a final selling price? Do the used car values on your website include sales tax and destination charges?

The data is the guide value for the vehicle itself. The data sources used to determine the used car values are actual auction and retail sales transactions, asking price information, as well as numerous macro- and micro-economic factors. These sources are reviewed by our editors every month. No the prices do not include taxes because sales tax varies in each state. However, NADAguides publishes regional values for use by dealers, lenders, insurance companies and taxing authorities. We also provide these same values for consumers on the website without any regionalization. Keep in mind there could be a few hundred dollars difference between the National and Regional values. Also remember that when purchasing a vehicle there are origination and DOC fees with the lender. These costs refer to the cost involved for titling, registration, and all the paperwork filed on behalf of buyers in their particular state by a dealership. Most states regulate the DOC fees that a dealer is allowed to charge. There is usually a maximum amount, but dealers can charge anything up to that amount. The charge is uniform, meaning it is on all deals. In some states dealers have to post the amount charged, usually in their Finance Office where customers sign their paperwork. Destination Charges must be added to the Base Invoice and Base MSRP (Manufacturer's Suggested Retail Price) in order to get the final price; these are not included in our values.

What exactly does wholesale value mean and does NADAguides provide this value for used vehicles?

Wholesale refers to the price a dealer would pay for a vehicle at an auction or from another dealer who is selling a vehicle. NADAguides does not publish a wholesale value; we simply publish three trade-in values that reflect a number close to the referenced wholesale value. Wholesale value vehicles still need to be reconditioned and in most cases, transported to the purchasing dealer's location.

What would cause the value of a vehicle to go up over time rather than decrease?

When there is a significant decline in new vehicle sales, the market has far fewer trade-ins. Programs such as the Cash for Clunkers program can remove a large block of vehicles that possibly would have re-sold. Rental car companies may keep their fleets in service longer, which also causes a shortage in used car supply resulting in a strong demand. Until new car volume returns to about 14 million, you will continue to see some upward pressure on some segments. Another contributing factor could be that your state has a higher tax rate per \$100.00 of value. With dealers and private parties looking to purchase used vehicles and the supply limited, prices in most segments have increased.

Why can't I find a value for my special edition vehicle that was imported to the United States?

Vehicle values are determined by NADAguides analysts through careful review and analysis of vehicle auction and retail sales transactions. Special edition vehicles typically have limited production runs producing a small quantity of units which may limit the transactional data available to NADAguides. NADAguides will only value the most popular options, equipment, and vehicles and will not make any attempt to track or value the special edition option as a result of low production numbers and insufficient amounts of data. Another issue is that the editors review data by vehicle VIN and if the vehicle you are searching does not have a unique VIN, the results cannot be tracked. Without sufficient supporting data, an accurate value cannot be determined. If you do find a value for your vehicle, please keep in mind that this value is pure speculation.

If a dealer is using "auction" values as a trade-in value benchmark instead of NADAguides.com values online, how do I know what a fair price for my vehicle would be to trade-in to a dealer?

Auction values are a tool that some dealers use when accessing their value of a particular vehicle. At times, dealers do send vehicles they have taken in on trade to auctions and some dealers may refer to auction values because of this. Regardless, we recommend using the trade-in and retail pricing found on NADAguides.com to guide your vehicle valuation. The values provided on NADAguides.com take into consideration the mileage, vehicle condition and optional equipment of your specific trade-in vehicle. If the trade-in vehicle has been well maintained, the NADAguides.com trade-in values will be close to those prices happening at auction. Market supply can also be a factor. If there is a low demand for your particular vehicle in your area, a dealer will have to debate holding this vehicle longer to sell if the supply is greater than the current market demand.

Auction values are a part of the evaluation equation and auction transactional data factors heavily into the values found on NADAguides.com. These values reflect averages, so vehicles will be both purchased and sold for more and less than the guide numbers.

There are also a great number of alternative dealers you may want to visit in your area when considering trading-in your vehicle.

Does or will NADAguides provide any values for converted electric vehicles in the used car category?

At this point in time NADAguides has no plans on valuing converted electric vehicles. NADAguides analysts will value electric vehicles (Leaf, Focus, etc.) that are sold through traditional franchised dealers.

Does NADAguides use a depreciation schedule to determine depreciation percentage rate per year?

NADAguides does not use a depreciation schedule to determine the value of used vehicles. We use auction data, retail data, asking price data, as well as macro- and micro- economic factors and judgment among other things in an attempt to depict the used vehicle market. Used vehicles depreciate at different rates, which is why we do not use a standard depreciation percentage rate across all vehicles.

Vehicle book value: Cars, Motorcycles, RVs & Boats -- what are the basics of values?

No matter what type of vehicle you own, it can be pretty difficult knowing your vehicle's value. Vehicle values, especially car values, depreciate over time (with the exception of classic and vintage cars). Review and research your used car values on NADAguides.com for accurate data and pricing. You can find both new and used motorcycle prices and values in addition to boat values, and RV Values.

Whatever your vehicle type, owners should maintain the vehicle's condition to **retain as much value as possible**. Two different vehicles of the same model may have drastically varying prices depending on options, mileage, and overall condition. Generally speaking, the more miles a vehicle has the less it is worth. This is strictly because the more the vehicle has been used, the closer it is to the end of its life span. This theory applies to vehicle options as well.

The more optional equipment a vehicle has, the higher the net book value of that vehicle will be. It is important to note that these must be options installed by the manufacturer. To maximize resale value, make sure the exterior, interior, and mechanics of your vehicle are in excellent condition. Mechanically speaking, to ensure top dollar, all components should be fully functional. Additionally, the vehicle should be able to pass any and all state smog/vehicle inspection requirements. The vehicle should also be free of rust, which is a major catalyst of structural damage. Exterior elements should be free of scratches, dents, and other damage. Original paint and color that is not faded is also an exterior factor that should be taken under consideration. The vehicle's interior should be void of any smoke/water damage, stains, or other physical damage to interior materials. **Keeping your vehicle in tip-top shape will equate to a vehicle's higher resale value.**

How do I value a salvage title?

NADAguides' values assume a vehicle is clean. Appropriate deductions should be made for reconditioning costs incurred to put the vehicle in salable condition. NADAguides' editors have not attempted to determine what, if any, effect a salvage title may have on a vehicle's value.

What are the definitions for the valuations listed for Autos, RVs, Boats, Motorcycles and Classic Cars?

Automotive pricing and values for new and used cars

Invoice: The dealership's cost for a vehicle from the manufacturer including holdback and advertising costs. Invoice price does not include dealer installed equipment and destination charges.

MSRP: MSRP is the base Manufacturer's Suggested Retail Price at the time of introduction, including standard equipment only and excludes taxes, transportation and destination.

Rough trade-in: Rough Trade-In values reflect a vehicle in rough condition, meaning a vehicle with significant mechanical defects requiring repairs in order to restore reasonable running condition. Paint, body and wheel surfaces have considerable damage to their finish, which may include dull or faded (oxidized) paint, small to medium size dents, frame damage, rust or obvious signs of previous repairs. Interior reflects above average wear with inoperable equipment, damaged or missing trim and heavily soiled/permanent imperfections on the headliner, carpet, and upholstery. Vehicle may have a branded title and un-true mileage. Vehicle will need substantial reconditioning and repair to be made ready for resale. Some existing issues may be difficult to restore. Because individual vehicle condition varies greatly, users of NADAguides.com may need to make independent adjustments for actual vehicle condition.

Average trade-in: The Average Trade-In values on nadaguides.com are meant to reflect a vehicle in average condition. A vehicle that is mechanically sound but may require some repairs/servicing to pass all necessary inspections; Paint, body and wheel surfaces have moderate imperfections and an average finish and shine which can be improved with restorative repair; Interior reflects some soiling and wear in relation to vehicle age, with all equipment operable or requiring minimal effort to make operable; Clean title history; Vehicle will need a fair degree of reconditioning to be made ready for resale. Because individual vehicle condition varies greatly, users of nadaguides.com may need to make independent adjustments for actual vehicle condition.

Clean trade-in: Clean Trade-In values reflect a vehicle in clean condition. This means a vehicle with no mechanical defects and passes all necessary inspections with ease. Paint, body and wheels have minor surface scratching with a high gloss finish and shine. Interior reflects minimal soiling and wear with all equipment in complete working order. Vehicle has a clean title history. Vehicle will need minimal reconditioning to be made ready for resale. Because individual vehicle condition varies greatly, users of NADAguides.com may need to make independent adjustments for actual vehicle condition.

Clean retail: Clean Retail values reflect a vehicle in clean condition. This means a vehicle with no mechanical defects and passes all necessary inspections with ease. Paint, body and wheels have minor surface scratching with a high gloss finish and shine. Interior reflects minimal soiling and wear with all equipment in complete working order. Vehicle has a clean title history. Because individual vehicle condition varies greatly, users of NADAguides.com may need to make independent adjustments for actual vehicle condition.

Note: Vehicles with low mileage that are in exceptionally good condition and/or include a manufacturer certification can be worth a significantly higher value than the Clean Retail price shown.

Boat pricing and values for new and used boats

MSRP: MSRP is the base Manufacturer's Suggested Retail Price at the time of introduction, including standard equipment only and excludes taxes, transportation and destination.

Suggested List Price: We have included manufacturer's suggested retail pricing (MSRP) to assist in the financing, insuring and appraising of vessels. The MSRP is the manufacturer's and/or distributor's highest suggested retail price in the U.S.A. when the unit was new. The MSRP is refurbished by the manufacturer and/or distributor and are assumed to be correct. Unless indicated, the MSRP does not include destination charges, dealer set-up, state or local taxes, license tags or insurance.

Low Retail: A low retail valued boat will show excessive wear and tear either cosmetically and/or mechanically. This boat may or may not be in running order. The buyer can expect to invest in cosmetic and/or mechanical work. Low retail vessels are usually not found on a dealer's lot. **Low Retail is not a trade-in value.**

Average Retail: An average retail valued boat should be in a good condition with no visible damage or defects. This boat will show moderate wear and tear and will be in sound running condition. The buyer may need to invest in either minor cosmetic or mechanical work.

Classic Car pricing and values for new and used classic cars

Original MSRP: Manufacturer Suggested Retail Price

Low Retail: This vehicle would be in mechanically functional condition, needing only minor reconditioning. The exterior paint, trim and interior would show normal wear, needing only minor reconditioning. May also be a deteriorated restoration or a very poor amateur restoration. Mostly usable "as-is". This column does **not** represent a "parts car" or a non-running vehicle.

Note: Some of the vehicles in this publication could be considered "Daily Drivers" and are not valued as a classic vehicle. When determining a value for a daily driver, it is recommended that the subscriber use the low retail value.

Average Retail: This vehicle would be in good condition overall. It could be an older restoration or a well-maintained original vehicle. Completely operable. The exterior paint, trim and mechanics are presentable and serviceable inside and out. A "20-footer".

High Retail: This vehicle would be in excellent condition overall. It could be a completely restored or an extremely well-maintained original vehicle showing very minimal wear. The exterior paint, trim and mechanics are not in need of reconditioning. The interior would be in excellent condition. Some vehicles may be considered "matching numbers" vehicles.

Note: This column does **not** represent a "100 Point" or "# 1" vehicle*.

* A "100 Point" or "# 1" vehicle is not driven. It would generally be in a museum or transported in an enclosed trailer to concours judging and car shows. This type of car would be stored in a climate regulated facility.

Motorcycle pricing and values for new and used motorcycles

MSRP: MSRP is the base Manufacturer's Suggested Retail Price at the time of introduction, including standard equipment only and excludes taxes, transportation and destination.

Suggested List Price: The manufacturer's (distributors) highest suggested list price in the U.S.A. when the unit was new. Unless indicated, the suggested list price does not include destination charges, dealer set-up, state or local taxes, license tags or insurance.

Low Retail: A low retail unit may have extensive wear and tear. Body parts may have dents and blemishes. The buyer can expect to invest in cosmetic and/or mechanical work. This vehicle should be in safe running order. Low retail vehicles usually are not found on dealer lots. **Low Retail is not a trade-in value.**

Average Retail: An average retail unit should be clean without obvious defects. All rubber and cables should be in good condition. The paint should match and have a good finish. All lights and switches should work properly. The mileage should be within or slightly higher than the average range. This unit should also pass any emission inspection.

RV pricing and values for new and used RVs

MSRP: MSRP is the base Manufacturer's Suggested Retail Price at the time of introduction, including standard equipment only and excludes taxes, transportation and destination.

Suggested List Price: The value listed reflects the approximate price of the unit when it is brand new. The prices listed are furnished by the manufacturer and are assumed to be correct. The list price does not include freight charges.

Low Retail: A low retail unit may have extensive wear and tear. Body parts may have dents and blemishes. The buyer can expect to invest in cosmetic and/or mechanical work. This vehicle should be in safe running order. Low retail vehicles usually are not found on dealer lots. **Low Retail is not a trade-in value.**

Average Retail: An average retail vehicle should be clean and without glaring defects. Tires and glass should be in good condition. The paint should match and have a good finish. The interior should have wear in relation to the age of the vehicle. Carpet and seat upholstery should be clean, and all power options should work. The mileage should be within the acceptable range for the model year. An average Retail vehicle on a dealer lot may include a limited warranty or guarantee, and possibly a current safety and/or emission inspection (where applicable).

What is included within the price when adding the Snow Plow Pkg. /Plow option?

Our intent for this option is to value not only the preparation for the snow plow (the extra brackets, lights, controls, etc.) but the actual snow plow that would be capable of moving large amounts of snow.

Does NADAguides provide values of vehicles that have been in a collision and repaired?

It is very difficult, if not impossible, to determine diminished value from an accident and as a result, NADAguides makes no attempt to take a stand on diminished value. Any aspect of the vehicle's history can have an effect on the value of a vehicle; and, the vehicle's history and condition should be considered when determining a vehicle's value. Since the actual condition and history of an individual vehicles varies greatly, users of NADAguides values may need to make independent adjustments for a variety of reasons not specifically accounted for by NADAguides.

How does NADAguides value a vehicle?

When we attempt to value a used vehicle we use a number of data points. These data points include, but are not limited to, actual wholesale transactions (around 80% of the market with our relationship with NAAA) and retail transactions (through our relationship with J.D. Power and their PIN data which is obtained their actual Dealer Management Systems), as well as asking price information from www.autotrader.com. In addition, we have data from various OEMs and wholesalers and retailers of used vehicles that provide us the amounts for which they paid and sold their vehicles. We also take into consideration MSRP, invoice, equipment assumptions, as well as supply and demand and other macro- and micro-economic factors and the competitive landscape of vehicles. Our retail value is what a person could reasonably pay for a vehicle at a dealer's lot. Our values are designed and intended to assist users in performing their own valuation of a particular used vehicle. The process by which users of NADAguides determine valuation is inherently subjective. Individual vehicles may have an actual value that is higher or lower than the estimated values created by us. NADA has been around for over 80 years and is the premier valuation guide in the used vehicle industry. Customers include, but are not limited to: dealers, wholesalers, rental car companies, insurance companies, lending institutions, OEMs,

government agencies, as well as individual consumers. We attempt to create the most accurate, market-reflective, unbiased vehicle values and we believe we do so each and every time one of our products is presented to the outside world.

Is the clean retail value just the value of the car or does it include dealer fees?

Our retail value is what a person could reasonably pay for a vehicle at a dealer's lot. It does not include sales tax, and destination charges are only used for new vehicle purchases and would not come into play for a used value.

Do all vehicles automatically drop in value when a new model year is released in September?

September is historically the month when new models become available for sale, but it does not mean that a vehicle automatically drops in value. There are quite a few factors that begin at this time of year that put pressure on used vehicle values with the introduction of the new model year being one. For instance, many fleet companies sell their old vehicles in earnest at this time of year in preparation for the new model year vehicles and a decreased demand for their vehicles. This is especially true of rental car companies. Traditionally this is also the time of year when retail demand for used vehicles drops as many people are preparing for the fall and winter seasons. Some 4WD trucks may rise in value, but it is highly unlikely that a regular sedan would until the spring when retail demand rises quickly. Manufacturers also usually discount the old model year vehicles which often creates at least temporary pressure on used values. We assume a vehicle is constantly aging and gaining mileage, and historically September through December are the months when used values drop the most, but as stated, it isn't fully caused by the introduction of the new model year.

Why is my vehicle value on the site far below sale prices in my area?

Individual vehicles may have an actual value that is higher or lower than the estimated values created by NADAguides. We use sales from around the country and adjust our values on a regular basis.

Does NADAguides value rebuilt or replaced components?

NADAguides makes no attempt to distinguish between vehicles that have rebuilt and or replaced components and those that do not. Any aspect of the vehicle's history may have an effect on the value of a vehicle. Vehicle history and condition should be considered when determining a vehicle's value. Since the actual condition and history of individual vehicles varies greatly users of NADAguides values may need to make independent adjustments for a variety of reasons not specifically accounted for by NADAguides including mileage discrepancies with the odometer and the title.

Does the MSRP price of a vehicle include the listed cost of the vehicles engine?

The MSRP on a new vehicle includes the base engine for a vehicle and then allows for additional options, in this case a different engine, to be added.

I have extremely low mileage on my older model year vehicle. Why do your values seem so low?

The NADAguides value is an attempt to value the daily-driven vehicle, not the quasi-collectible you possess.

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NADAguides Frequently Asked Questions

Finance and Insurance

How does the insurance company use your values to value my car?

Are there any values that reflect a car's worth after being repaired from an accident?

Is there any way to figure out the value of a vehicle based upon a special circumstance such as having "theft recovery" on the title?

My new car has been totaled and I feel that the adjustor may have valued my vehicle too low, what can I do?

What is a clear title or record mean? If my car has been in an accident, does this mean my car is salvaged?

Where can I find a loan value for used cars?

Would the branding of "fleet" or "taxicab" negatively affect the pricing of a vehicle?

How does the insurance company use your values to value my car?

Sometimes insurance companies will use an outside source to help determine a value of a used vehicle such as Mitchell International, CCC or Audatex. Some insurance companies will use NADAguides in a total loss process. In this instance, they typically start with the clean retail value and then deduct for the condition of your vehicle before the total loss. That value less any deductible and depreciation will be your settlement. They use our mileage tables and will give you added value for miles less than average for your vehicle.

Are there any values that reflect a car's worth after being repaired from an accident?

There is no data to support a precise value loss for damage. Because those types of values are not available, NADAguides does not recognize a diminished value. The loss from damage depends on the severity of the damage repair, how good the repairs look, the age of the vehicle repaired and its class. Class means that a more expensive car when new will be affected more with damage than a lesser priced new vehicle. Damage on a Mercedes has a greater affect, than the same damage on a Chevrolet Lumina. It is always a good idea to take the car to a trusted body shop and ask their opinion, as well as your insurance company. Once you receive their input you can deduct an amount both agree on from an NADAguides value.

Is there any way to figure out the value of a vehicle based upon a special circumstance such as having "theft recovery" on the title?

If you are able to run a vehicle history report, you might be able to learn a little more about the vehicle's history. Keep in mind that the newer the vehicle and the more expensive when new, the greater the effect of any damage. Make sure to ask the current owner to see the repair estimate or bill, that way you can see how the theft affects what had to be done.

My new car has been totaled and I feel that the adjustor may have valued my vehicle too low, what can I do?

The best place to start would be the window sticker if you still have it; this is your best discussion point with your adjustor. If you did not purchase the car brand new, most

manufacturers can reproduce the original window label electronically. If you cannot obtain the window sticker at all, search for similar vehicles for sale. This can help you and the adjustor reach a fair settlement price.

What is a clear title or record mean? If my car has been in an accident, does this mean my car is salvaged?

Clear title does not have anything to do with damage on a vehicle. Clear title means there are no liens against the vehicle and nothing is owed on it. When you finance a vehicle, you get what is called a memo title and your lender keeps the original title and files, with the court, and a lien on the vehicle allowing the lender the right to resell the vehicle if you default. When you make the final loan payment the lien is cancelled, you receive a clear title. A "total loss salvaged vehicle" is a vehicle that has been wrecked, destroyed or damaged to an extent that the registered owner, leasing company, financial institution or insurance company which insured the vehicle, considers it uneconomical to repair the vehicle and because of this, the vehicle is not repaired for the vehicle owner at the time of the event resulting in damage. Normally, this type of vehicle cannot be sold or transferred without first obtaining a Salvaged Title. Due to the many different ways a vehicle can be issued a salvaged title, we cannot determine an amount or percentage to deduct from a value. A vehicle can be stolen and recovered with no damage at all, but it would be given a salvaged title nonetheless. Because of this, questions should be directed to the registered owner, leasing company or financial institution. If you have questions, it's a good idea to check the history of a vehicle. A Vehicle History Report can confirm a clean history or reveal potentially hidden problems.

Where can I find a loan value for used cars?

NADAguides.com does not provide vehicle Loan Values online. Lenders look at values and advances differently and they factor in the credit worthiness of the consumer as well. The loan value is an approximation of what a dealer might expect as an advance from a lender. This value is important in the secondary finance markets for customers with lower credit scores. The competitiveness of the market will also play a part in a lender's decision on floor plan.

Would the branding of "fleet" or "taxicab" negatively affect the pricing of a vehicle?

It has been our experience that a brand of taxicab would negatively affect the value of a vehicle versus a non-taxicab. That dollar difference would depend on a number of issues including the type, age, and value of the vehicle population as a whole. For example, a ten year old Ford Crown Victoria taxicab would most likely not be as affected as a two year old Mercedes-Benz R Class versus their cohorts in the vehicle population. This would be despite the fact that both are used in taxicab fleets. That being said, we do not make an attempt to quantify that difference as a general rule. We could isolate all factors for each vehicle to determine what the impact would be, but the market for that kind of intelligence is just not cost-worthy for us to do. However, vehicle condition and history should be considered when determining a vehicle's value. Since the actual condition of individual vehicles varies greatly, users of NADAguides may need to make independent adjustments for a variety of condition-based factors not specifically accounted for by NADAguides.

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2011 WL 2470920

State of North Carolina

*1 Report on Market Conduct Examination of the

USAA Casualty Insurance Company

San Antonio, Texas

January 14, 2011

MARKET CONDUCT REPORTS

North Carolina Department of Insurance



Image 1 within document in PDF format.

Report

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Raleigh, North Carolina

January 14, 2011

Honorable Wayne Goodwin

Commissioner of Insurance

Department of Insurance

State of North Carolina

Dobbs Building

430 N. Salisbury Street

*2 Raleigh, North Carolina 27603

Honorable Mike Geeslin

Commissioner of Insurance

Texas Department of Insurance

333 Guadalupe Street

Austin, Texas 78701

Honorable Commissioners:

Pursuant to your instructions and in accordance with the provisions of [North Carolina General Statute \(NCGS\) 58-2-131](#), a general examination has been made of the market conduct activities of

USAA CASUALTY INSURANCE COMPANY (NAIC #25968)

NAIC Exam Tracking System Exam Number: NC170-M63

San Antonio, Texas

hereinafter generally referred to as the Company, at the North Carolina Department of Insurance (Department) office located at 11 S. Boylan Avenue, Raleigh, North Carolina. A report thereon is respectfully submitted.

FOREWORD

This examination reflects the North Carolina insurance activities of USAA Casualty Insurance Company. The examination is, in general, a report by exception. Therefore, much of the material reviewed will not be contained in this written report, as reference to any practices, procedures, or files that manifested no improprieties were omitted.

SCOPE OF EXAMINATION

This examination commenced on March 29, 2010 and covered the period of January 1, 2006 through December 31, 2008 with analyses of certain operations of the Company being conducted through January 12, 2011. All comments made in this report reflect conditions observed during the period of the examination.

The examination was arranged and conducted by the Department. It was made in accordance with Market Regulation standards established by the Department and procedures established by the National Association of Insurance Commissioners (NAIC) and accordingly included tests of policyholder treatment, marketing, underwriting practices, terminations, and claims practices.

It is the Department's practice to cite companies in apparent violation of a statute or rule when the results of a sample show errors/noncompliance at or above the following levels: 0 percent for consumer complaints, sales and advertising, producers who were not appointed and/or licensed, and the use of forms and rates/rules that were neither filed with nor approved by the Department; 7 percent for claims; and 10 percent for all other areas reviewed. When errors are detected in a sample, but the error rate is below the applicable threshold for citing an apparent violation, the Department issues a reminder to the company.

EXECUTIVE SUMMARY

This market conduct examination revealed concerns with Company procedures and practices in the following areas:

Consumer Complaints - Complaints not listed on the Company's complaint register.

Policy Forms and Filings - Unable to provide a copy of the approved filing for the adverse underwriting decision notice for property coverage.

Termination of Producers - Unable to provide a copy of the termination letter sent to producers.

***3 Underwriting and Rating** - Private Passenger Automobile: producers not appointed and incorrect recoupment/allocation surcharge. Homeowners: producers not appointed and/or licensed in North Carolina. Dwelling Fire: incorrect rating.

Terminations - Dwelling Fire Cancellations: improper file documentation. Private Passenger Automobile Nonrenewals: ineligible reason used and ceded liability not offered.

Specific violations related to each area of concern are noted in the appropriate section of this report. All North Carolina General Statutes and rules of the North Carolina Administrative Code cited in this report may be viewed on the North Carolina Department of Insurance Web site www.ncdoi.com by clicking "NCDOI DIVISIONS" then "Legislative Services".

This examination identified various non-compliant practices, some of which may extend to other jurisdictions. The Company is directed to take immediate corrective action to demonstrate its ability and intention to conduct business in North Carolina according to its insurance laws and regulations. When applicable, corrective action for other jurisdictions should be addressed.

All unacceptable or non-compliant practices may not have been discovered or noted in this report. Failure to identify or criticize improper or non-compliant business practices in North Carolina or in other jurisdictions does not constitute acceptance

of such practices. Examination report findings that do not reference specific insurance laws, regulations, or bulletins are presented to improve the Company's practices and ensure consumer protection.

COMPANY OVERVIEW

History and Profile

USAA Casualty Insurance Company (CIC) is a stock property and casualty insurer specializing in personal lines property and casualty insurance for family members of USAA members. CIC was originally incorporated in Texas on September 6, 1968, under the laws of Texas and began business on December 1, 1969. The Company operated under the title United Services Casualty Insurance Company until December 2, 1970, when the current title was adopted. Effective July 16, 1990, the Company merged with and into the USAA Casualty Insurance Company of Florida and redomesticated from San Antonio, Texas, to Tampa, Florida. Effective January 1, 2000, the Company redomesticated from Florida back to Texas. Simultaneously, the name was changed back to USAA Casualty Insurance Company.

Company Operations and Management

The Company is a writer of personal lines insurance coverages and is licensed in all 50 states, the District of Columbia, Guam and the US Virgin Islands.

Direct written premium for the Company's 2008 countrywide property and casualty operations was \$3,138,694,249. North Carolina's production for the same period was \$99,360,848. Premiums written in North Carolina between 2006 and 2008 increased approximately 4.0 percent. The charts below outline the Company's mix of business for selected lines in 2008 and loss ratios in North Carolina for the examination period.

Line of Business	Written Premium	Percentage
Private Passenger Automobile	67,075,774	67.5
Homeowners	25,931,383	26.1
Inland Marine	3,003,021	3.0
Fire and Allied Lines	2,188,900	2.2
Other Liability	896,987	.9
Ocean Marine	175,238	.2
Earthquake	89,545	.1
Total	\$99,360,848	100.0

Year	Written Premium	Earned Premium	Incurred Losses ^{a1}	Loss Ratio
2006	\$95,550,156	\$94,364,344	\$53,276,399	56.5
2007	\$94,219,439	\$93,499,283	\$62,299,103	66.6
2008	\$99,360,848	\$97,769,154	\$62,950,833	64.4

a1 **Does not include IBNRs**

Certificates of Authority

*4 The Certificates of Authority issued to the Company were reviewed for the period under examination. These certificates were reviewed to determine compliance with the provisions of [NCGS 58-7-15](#). The Company's writings in North Carolina were deemed to be in compliance with the authority granted.

Disaster Recovery Procedures

The Company has a detailed business continuation plan established to increase its chances of preventing disasters, as well as providing continuing operations following natural or man-made disasters. The mission of business continuation is to implement crisis management best practices by appropriately identifying the risks and ensuring adequate risk mitigation strategies to ensure continuation of business with minimal impact on consumers. The Company conducts exercises to validate emergency response and recovery strategies and capabilities. USAA has geographically separated regional offices in Arizona, California, Colorado, Florida and Virginia in the event the home office in San Antonio, Texas is unavailable. The Company has an offsite data center available in the event the home office data center is impacted. Technical teams are in place to begin system recovery efforts until a third data center is up and running. The data center architecture is a three geographically dispersed data center redundancy model that provides effective recovery for critical applications. USAA records and documents are maintained electronically and are systematically managed through a document retentions schedule. USAA has contracted with several third party call centers to provide additional call center support should any facility or call center become impacted. Each USAA division has a Situation Management Team that is activated by the Situation Manager in an emergency or disaster situation. The teams are responsible for identifying the impact to business operations and coordinating responses to minimize impact and to restore business operations effectively and efficiently.

Rate Evasion Procedures

The Company has established procedures to address nonfleet private passenger automobile insurance rate evasion fraud by identifying any ineligible risk as defined in [NCGS 58-37-1\(4a\)](#) and verifying residency of the policyholder who owns a motor vehicle registered or principally garaged in North Carolina. The Company was found to be in compliance with the provisions of [NCGS 58-2-164](#).

POLICYHOLDER TREATMENT

Consumer Complaints

The Company's complaint handling procedures were reviewed to determine compliance with applicable North Carolina statutes and rules.

The Company was deemed to be in apparent violation of the provisions of Title 11 of the North Carolina Administrative Code, (NCAC), Chapter 19, Section 0103 as 8 complaints (16.0 percent error ratio) were not listed on the Company's complaint register.

*5 The Company's complaint register was reconciled with a listing furnished by the Consumer Services Division of the Department. Fifty of the 107 complaints contained in the Department's listing were randomly selected and received for review. The distribution of complaints requiring a response to the Department is shown in the chart below.

Type of Complaint	Total
Claims	41
Underwriting	8
Administrative	1
Total	50

The Company's response to each complaint was deemed to be appropriate to the circumstances. The average service time to respond to a Departmental complaint was 5 calendar days. A chart of the Company's response time follows:

Service Days	Number of Files	Percentage of Total
1 - 7	48	96.0
8 - 14	1	2.0
22 - 30	1	2.0
Total	50	100.0

Privacy of Financial and Health Information

The Company provided privacy of financial and health information documentation for the examiners' review. The Company exhibited policies and procedures in place so that nonpublic personal financial or health information is not disclosed unless the customer or consumer has authorized the disclosure. The Company was found to be compliant with the provisions of [NCGS 58-39-25](#), [58-39-26](#), and [58-39-27](#).

MARKETING

Policy Forms and Filings

Policy forms and filings for the Company were reviewed to determine compliance with appropriate North Carolina statutes and rules. Emphasis of the review was placed on the following lines of business:

1. Private Passenger Automobile
2. Homeowners/Renters
3. Dwelling Fire
4. Personal Inland Marine (Valuable Personal Property)

Filings for the private passenger automobile, homeowners and dwelling fire lines of business were made by the North Carolina Rate Bureau on behalf of the Company. Deviations for these lines of business were made to the Department by the Company. The Company's personal inland marine coverages were written utilizing independently filed rates.

The Company was deemed to be in apparent violation of the provisions of 11 NCAC 19.0102(a) and 19.0106(a)(4)(h) as it was unable to provide a copy of the approved filing for the adverse underwriting decision notice for property coverage.

Sales and Advertising

Sales and advertising practices of the Company were reviewed to determine compliance with the provisions of NCGS 58-63-15.

As a direct writer, the Company markets directly to insureds or prospective insureds. The Company also provides information about its products through its website at www.usaa.com. The advertising objective statement was reviewed along with the Company website and sales brochures.

No unfair or deceptive trade practices were noted in this segment of the examination.

Producer Licensing

*6 The Company's procedures for appointment and termination of its producers were reviewed to determine compliance with the appropriate North Carolina statutes and rules. Fifty appointed and 50 terminated producer files were randomly selected and received for review from populations of 2,786 and 1,792, respectively.

All appointment and termination files reviewed contained evidence that notification was submitted to the Department in accordance with the timetables stipulated under the provisions of NCGS 58-33-40 and NCGS 58-33-56.

The Company was deemed to be in apparent violation of the provisions of 11 NCAC 19.0102(a) and 19.0106(a)(3)(h) as 20 of the terminated producer files reviewed (40.0 percent error ratio) did not contain a copy of the notification of termination that was sent to the producer.

Agency Management

The Company is a direct writer based in San Antonio, Texas and does not have a marketing effort specifically directed for North Carolina. A phone sales and service team is maintained and led by the Executive Director of Policy Service.

Approximately 3,900 representatives are licensed and appointed to handle transactions for North Carolina. Appointments, terminations, and licensing for service representatives are handled by the Licensing Department.

UNDERWRITING PRACTICES

Overview

The Company's marketing philosophy in North Carolina focuses on personal lines. The Company provided the examiners with listings of the following types of active policies for the period under examination:

1. Private Passenger Automobile
2. Homeowners/Renters
3. Dwelling Fire

4. Personal Inland Marine (Valuable Personal Property)

A random selection of 300 policies was made from a total population of 39,673. Each policy was reviewed for adherence to underwriting guidelines, file documentation and premium determination. Additionally, the policies were examined to determine compliance with the appropriate North Carolina statutes and rules, policy provisions and the applicable policy manual rules.

Private Passenger Automobile

The Company provided a listing of 14,432 active private passenger automobile policies issued during the period under examination. One hundred policies were randomly selected and received for review.

The Company's private passenger automobile coverages were written utilizing manual and deviated rates. Policies were written on a 6-month basis. Risk placement was determined by the Company's underwriting guidelines and the underwriter. No discrepancies were noted in the Company's use of its underwriting guidelines. All policy files contained sufficient documentation to support the Company's classification of the risk.

The Company was deemed to be in apparent violation of the provisions of [NCGS 58-33-40\(h\)](#) as 3 policies reviewed (3.0 percent error ratio) were quoted/issued by a producer who was not appointed.

*7 The Company was deemed to be in apparent violation of the provisions of [NCGS 58-37-35\(l\)](#) and [58-37-40\(f\)](#) as an incorrect recoupment/allocation surcharge was applied on 12 policies reviewed (12.0 percent error ratio).

The Company was reminded of the provisions of [NCGS 58-36-30\(a\)](#) and Rule 5 of the Personal Auto Manual as 5 policies reviewed (5.0 percent error ratio) were rated incorrectly. The rating errors consisted of the following:

- Incorrectly applied Safe Driver Incentive Plan (SDIP) points on 3 policies.
- Incorrectly applied a deviation to bodily injury and property damage liability premium prior to computing the SDIP surcharge on 2 policies.

The Company was reminded of the provisions of [NCGS 58-37-40\(e\)](#) and the North Carolina Reinsurance Facility Standard Practices Manual, Section 4, Rule 10 as it failed to utilize standard undeviated liability premiums in determining the recoupment/allocation surcharge on 2 policies reviewed (2.0 percent error ratio). The rating errors resulted in 16 premium undercharges and 3 premium overcharges to the insureds. At the request of the examiners, refunds in the amount of \$102.60 were issued by the Company for the overcharges. The remaining 81 premiums charged were deemed correct.

Homeowners/Renters

The Company provided a listing of 19,756 active homeowners/renters policies issued during the period under examination. One hundred policies were randomly selected and received for review.

The Company's homeowners coverages were written utilizing manual and deviated rates. Policies were written on an annual basis. Risk placement was determined by the Company's underwriting guidelines and the underwriter. The Company's renters coverage is an independently filed program. No discrepancies were noted in the Company's use of its underwriting guidelines. All policy files contained sufficient documentation to support the Company's classification of the risk.

The Company was deemed to be in apparent violation of the provisions of NCGS 58-33-5 and 58-33-26(a) as 3 policies reviewed (3.0 percent error ratio) were quoted/issued by a producer who was not licensed in North Carolina. The Company was deemed to be in apparent violation of the provisions of NCGS 58-33-40(h) as 6 policies reviewed (6.0 percent error ratio) were quoted/issued by a producer who was not appointed.

The Company was reminded of the provisions of NCGS 58-36-30(a) as 4 policies reviewed (4.0 percent error ratio) were rated incorrectly. The rating errors consisted of the following:

- The North Carolina Rate Bureau premium for Coverage A was calculated incorrectly on 2 policies.
- Incorrect territory was used to calculate the premium on 1 policy.
- Territory deviation was not applied on 1 policy.

The rating errors resulted in 2 premium undercharges and 2 premium overcharges to the insureds. At the request of the examiners, refunds in the amount of \$40.00 were issued by the Company for the overcharges. The remaining 46 premiums charged were deemed correct.

*8 The Company was reminded of the provisions of NCGS 58-63-15(1) as the declaration page for 2 policies reviewed (2.0 percent error ratio) inaccurately stated that the premium included an Academy Residence credit.

Dwelling Fire

The Company provided a listing of 832 active dwelling fire policies issued during the period under examination. Fifty policies were randomly selected and received for review.

The Company's dwelling fire coverages were written utilizing manual and deviated rates. Policies were written on an annual basis. Risk placement was determined by the Company's underwriting guidelines and the underwriter. No discrepancies were noted in the Company's use of its underwriting guidelines. All policy files contained sufficient documentation to support the Company's classification of the risk.

The Company was deemed to be in apparent violation of the provisions of NCGS 58-36-30(a) as 9 policies reviewed (18.0 percent error ratio) were rated incorrectly. The rating errors consisted of the following:

- Incorrect rounding procedures were used to calculate the premium on 4 policies.
- A 5% deductible debit for a \$100 all perils deductible was not applied to the Coverage B premium on 2 policies when Coverage A was not present on the policy.
- The premium for increased limits of Coverage B was not calculated using Rule 500 - Miscellaneous Rates on 1 policy when Coverage A was present on the policy.
- The premium credit for a 2% Wind and Hail deductible was incorrectly applied to only a portion of the Special Form premium on 1 policy.
- The \$25 minimum deductible credit was not applied for a \$100 all perils deductible on 1 policy.

The rating errors resulted in 4 premium undercharges and 5 premium overcharges to the insureds. At the request of the examiners, refunds in the amount of \$185.00 were issued by the Company for the overcharges. The remaining 41 premiums charged were deemed correct.

As a result of the incorrect rounding procedures, the incorrect premium calculation for increased limits of Coverage B when Coverage A was present on the policy and the incorrect application of the premium credit for the 2% Wind and Hail deductible, the Department requested the Company to conduct a self audit in those areas. The Company identified an additional 5,216 policy terms affected (excluding those that were reviewed by the examiners as noted above) that resulted in refunds being made in the amount of \$118,808.64. All refund checks were mailed to the insureds by November 22, 2010.

Personal Inland Marine (Valuable Personal Property)

The Company provided a listing of 4,653 active personal inland marine policies issued during the period under examination. Fifty policies were randomly selected and received for review.

The Company's personal inland marine coverages were written utilizing independently filed rates. Policies were written on an annual basis. Risk placement was determined by the Company's underwriting guidelines and the underwriter. No discrepancies were noted in the Company's use of its underwriting guidelines.

*9 All policy files contained sufficient documentation to support the Company's classification of the risk. All premiums charged were deemed correct.

TERMINATIONS

Overview

The Company's termination procedures were reviewed to determine compliance with the appropriate North Carolina statutes and rules, policy provisions, and the applicable policy manual rules. The review focused on the following lines of business:

1. Private Passenger Automobile
2. Homeowners/Renters
3. Dwelling Fire
4. Personal Inland Marine (Valuable Personal Property)

Special attention was placed on the validity and reason for termination, timeliness in issuance of the termination notice, policy refund (where applicable) and documentation of the policy file. A total of 51,170 policies were terminated during the period under examination. The examiners randomly selected 380 terminations for review.

Private Passenger Automobile Cancellations

One hundred cancelled private passenger automobile policies were randomly selected and received for review from a population of 25,464.

The reason for cancellation was deemed valid for all policies reviewed. The review revealed the following reasons for cancellation:

Reason for Cancellation	Number of Policies	Percentage
Coverage rewritten	56	56.0

Insured's request	22	22.0
Nonpayment of premium	22	22.0
Total	100	100.0

The Company was not required to issue cancellation notices for 78 of the cancellations reviewed as these policies were cancelled at the request of the insured or the coverage was rewritten. Cancellation notices for the remaining 22 policies stated the specific reason for cancellation. All insureds and loss payees were given proper and timely notification of cancellation.

All premium refunds were deemed correct. The Company issued the refunds in a timely manner.

The Company was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(h) as 1 file reviewed (1.0 percent error ratio) did not contain accounting records that documented the cancellation return premium.

The remaining policy files reviewed contained sufficient documentation to support the action taken by the Company. The Company sent the North Carolina Notice of Termination Form (FS-4) to the North Carolina Division of Motor Vehicles (DMV) when liability coverages were cancelled. The Company was deemed to be in compliance with the provisions of NCGS 20-309(e).

Homeowners/Renters Cancellations

One hundred cancelled homeowners/renters policies were randomly selected and received for review from a population of 22,399 policies.

The reason for cancellation was deemed valid for all policies reviewed. The review revealed the following reasons for cancellation:

Reason for Cancellation	Number of Policies	Percentage
Coverage rewritten	64	64.0
Insured's request	25	25.0
Nonpayment of premium	10	10.0
Underwriting reasons	1	1.0
Total	100	100.0

***10** The Company was not required to issue cancellation notices for 89 of the cancellations reviewed as these policies were cancelled at the request of the insured, nonpayment of premium, or the coverage was rewritten.

The Company was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(h) as 3 documents (3.0 percent error ratio) were not provided for review.

- One file did not contain a copy of the notice of cancellation to the insured.
- One file did not contain proof of mailing of the notice of cancellation.

- One file did not contain accounting information.

All premium refunds were deemed correct. The Company issued the refunds in a timely manner.

The final area of this review encompassed documentation of the policy file. All policy files reviewed contained sufficient documentation to support the action taken by the Company.

Dwelling Fire Cancellations

Fifty cancelled dwelling fire policies were randomly selected and received for review from a population of 1,839.

The reason for cancellation was deemed valid for all policies reviewed. The review revealed the following reasons for cancellation:

Reason for Cancellation	Number of Policies	Percentage
Insured's request	30	60.0
Coverage rewritten	19	38.0
Underwriting reasons	1	2.0
Total	50	100.0

The Company was not required to issue cancellation notices for 49 of the cancellations reviewed as these policies were cancelled at the request of the insured or the coverage was rewritten.

All premium refunds were deemed correct. The Company issued the refunds in a timely manner.

The Company was deemed to be in apparent violation of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(h) as 11 files reviewed (22.0 percent error ratio) did not contain proper documentation of the cancellation:

- Six files did not contain documentation of the insured's request to cancel.
- Five files did not contain any documentation referencing the cancellation.

The 5 files not containing any documentation were electronic files provided by the Company that did not provide the detail needed to determine the validity and reason for termination.

The remaining policy files reviewed contained sufficient documentation to support the action taken by the Company.

Personal Inland Marine (Valuable Personal Property) Cancellations

Fifty cancelled personal inland marine policies were randomly selected and received for review from a population of 1,334 policies.

The reason for cancellation was deemed valid for all policies reviewed. The review revealed the following reasons for cancellation:

Reason for Cancellation	Number of Policies	Percentage
Insured's request	30	60.0
Coverage rewritten	19	38.0
Underwriting reasons	1	2.0
Total	50	100.0

*11 The Company was not required to issue cancellation notices for 49 of the cancellations reviewed as these policies were cancelled at the request of the insured or the coverage was rewritten. The Company was reminded of the provisions of [NCGS 58-39-55\(a\)](#) as they failed to provide notice of cancellation to the insured for 1 file reviewed (2.0 percent error ratio).

All premium refunds were deemed correct. The Company issued the refunds in a timely manner.

The Company was reminded of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0104](#), and [19.0106\(a\)\(4\)\(h\)](#) as 1 file reviewed (2.0 percent error ratio) did not contain documentation of the insured's request to cancel the policy. The remaining files reviewed contained sufficient documentation to support the action taken by the Company.

Private Passenger Automobile Nonrenewals

The entire population of 9 nonrenewed private passenger automobile policies was selected and received for review.

The review revealed the following reason for nonrenewal:

Reason for Nonrenewal	Number of Policies	Percentage
Underwriting reasons	9	100.0
Total	9	100.0

The nonrenewal notices for the policies reviewed stated the specific reason for nonrenewal. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-36-85\(b\)](#) as an ineligible reason for nonrenewal was used to terminate 4 policies (44.4 percent error ratio). The Company was deemed to be in apparent violation of the provisions of [NCGS 58-37-50](#) as they did not offer liability coverage ceded to the North Carolina Reinsurance Facility when terminating 4 policies (44.4 percent error ratio) for reasons other than those specified in the statute.

The final area of this review encompassed documentation of the policy file. All policy files contained sufficient documentation to support the action taken by the Company.

Homeowners/Renters Nonrenewals

The entire population of 10 nonrenewed homeowners/renters policies was selected and received for review.

The reason for nonrenewal was deemed valid for all policies reviewed. The review revealed the following reason for nonrenewal:

Reason for Nonrenewal	Number of Policies	Percentage
Underwriting reasons	10	100.0
Total	10	100.0

The nonrenewal notices for the policies reviewed stated the specific reason for nonrenewal. All insureds and mortgagees were given proper and timely notification of nonrenewal.

The final area of this review encompassed documentation of the policy file. All policy files contained sufficient documentation to support the action taken by the Company.

Dwelling Fire Nonrenewals

The entire population of 10 nonrenewed dwelling fire policies was selected and received for review.

*12 The reason for nonrenewal was deemed valid for all policies reviewed. The review revealed the following reason for nonrenewal:

Reason for Nonrenewal	Number of Policies	Percentage
Underwriting reasons	10	100.0
Total	10	100.0

The nonrenewal notices for the policies reviewed stated the specific reason for nonrenewal. All insureds and mortgagees were given proper and timely notification of nonrenewal.

The final area of this review encompassed documentation of the policy file. All policy files contained sufficient documentation to support the action taken by the Company.

Personal Inland Marine (Valuable Personal Property) Nonrenewals

The entire population of 1 nonrenewed personal inland marine policy was selected and received for review.

The reason for nonrenewal was deemed valid for all policies reviewed. The review revealed the following reason for nonrenewal:

Reason for Nonrenewal	Number of Policies	Percentage
Underwriting reasons	1	100.0
Total	1	100.0

The nonrenewal notice for the policy reviewed stated the specific reason for nonrenewal. The insured was given proper and timely notification of nonrenewal.

The final area of this review encompassed documentation of the policy file. All policy files contained sufficient documentation to support the action taken by the Company.

Declinations/Rejections

Fifty declined/rejected applications were randomly selected and received for review from a population of 104. The reason for declination/rejection was deemed valid for all applications reviewed. The survey revealed the following reason for declination/rejection.

Reason for Declination/Rejection	Number of Declinations/Rejections
Underwriting reasons	50
Total	50

The Company was reminded of the provisions of [NCGS 58-37-25\(a\)](#) as 3 applicants for personal automobile coverage (6.0 percent error ratio) were not offered liability coverage ceded to the North Carolina Reinsurance Facility when they did not meet the Company's voluntary guidelines.

CLAIMS PRACTICES

Overview

The Company's claims practices were reviewed to determine compliance with the appropriate North Carolina statutes, rules and policy provisions. The review encompassed paid, automobile medical payment, first and third party bodily injury liability, closed without payment, subrogated, total loss settlement and litigated claims.

Claims service in North Carolina is under the direction of the Assistant Vice-President and is provided from the home office in San Antonio, Texas and by field claims personnel located in North Carolina. Claims supporting offices are located in Tampa, Florida, Norfolk, Virginia, Colorado Springs, Colorado and Phoenix, Arizona. The staff is comprised of 2 claims service directors, 15 claims service managers and 135 claims service representatives. Company adjusters provide the claim service with some assistance, at times, from independent adjusters. Independent adjusters have no check or draft authority. Claims are adjusted and managed exclusively by the Company's claims department. The salvage log is maintained and managed by the executive management of each respective claim handling location.

***13** Five hundred fifty claims were randomly selected for review from a population of 38,925.

Paid Claims

The examiners randomly selected and received 250 of the 29,165 first party automobile physical damage, first party property damage and third party property damage claims paid during the period under examination. The claim files were reviewed for timeliness of payment, supporting documentation and accuracy of payment.

The following types of claims were reviewed and the average payment time is noted in calendar days:

Type of Claim	Payment Time
Automobile physical damage	11.0
First party (excluding automobile physical damage)	15.0
Third party property damage	21.0

All payments issued by the Company were deemed to be accurate. Deductibles were correctly applied and depreciation taken was reasonable.

All claim files reviewed contained documentation to support the Company's payments. The documentation consisted of appraisals, estimates, repair bills and inventory listings.

Claims were not paid in a timely manner for 4 claims (1.6 percent error ratio). This matter could result in an apparent violation of the provisions of [NCGS 58-63-15\(11\)](#) if the occurrence is of such frequency as to be considered a general business practice.

Automobile Medical Payment Claims

Fifty automobile medical payment claims were randomly selected and received for review from a population of 1,146. The claim files were reviewed to determine if the Company had engaged in any unfair claims practices. The review of automobile medical payment claims disclosed no apparent violations of the provisions of [NCGS 58-63-15](#).

First and Third Party Bodily Injury Claims

Fifty first and third party bodily injury claims were randomly selected and received for review from a population of 1,911. The claim files were reviewed to determine whether the Company had engaged in any unfair claims practices. The review of first and third party bodily injury claims disclosed no apparent violations of the provisions of [NCGS 58-63-15](#).

Closed Without Payment Claims

Fifty closed without payment claims were randomly selected and received for review from a population of 439. The claim files were reviewed to determine if the Company's reasons for closing the claims without payment were valid.

The claim files reviewed contained documentation that supported the Company's reasons for closing the claims without payment. All reasons for denial or closing the files without payment were deemed valid. Claims were denied on an average of 14 calendar days for the 3-year period. The review of closed without payment claims disclosed no apparent violations of the provisions of [NCGS 58-63-15](#).

Subrogated Claims

*14 Fifty subrogated claims were randomly selected and received for review from a population of 1,958. The claim files were reviewed to determine if the insured's deductible was properly reimbursed by the Company when subrogation was successful.

Deductible reimbursements were not paid in a timely manner for 1 claim (2.0 percent error ratio). This matter could result in an apparent violation of the provisions of [NCGS 58-63-15\(11\)](#) if the occurrence is of such frequency as to be considered a general business practice. All reimbursements were deemed to be correct and were issued on a 3-year average of 3 calendar days from the date the Company collected the monies.

Total Loss Settlement Claims

Fifty total loss settlement claims were randomly selected and received for review from a population of 4,025. The claim files were reviewed to determine if the settlements were equitable and timely.

The Company primarily used CCC Information Services, Inc. to establish the actual cash value of totaled vehicles. All settlements were deemed equitable. Claims were not paid in a timely manner for 1 claim (2.0 percent error ratio). This matter could result in an apparent violation of the provisions of [NCGS 58-63-15\(11\)](#) if the occurrence is of such frequency as to be considered a general business practice. The payments were issued on a 3-year average of 21 calendar days. No apparent violations of the provisions of [NCGS 58-63-15\(11\)\(h\)](#), [11 NCAC 4.0418](#), or [4.0421](#) were noted during this review.

Litigated Claims

Fifty litigated claims were randomly selected and received for review from a population of 281. The claim files were reviewed to determine if the Company had engaged in any unfair claims practices. The review of litigated claims disclosed no apparent violation of the provisions of [NCGS 58-63-15](#).

SUMMARY

The Market Conduct examination revealed the following:

1. Policyholder Treatment

a. The Company was deemed to be in apparent violation of the provisions of [11 NCAC 19.0103](#) as 16.0 percent of the consumer complaints were not listed on the Company's complaint register.

2. Marketing

a. The Company was deemed to be in apparent violation of the provisions of [11 NCAC 19.0102\(a\)](#) and [19.0106\(a\)\(4\)\(h\)](#) as it was unable to provide a copy of the approved filing for the adverse underwriting decision notice for property coverage.

b. The Company was deemed to be in apparent violation of the provisions of [11 NCAC 19.0102\(a\)](#) and [19.0106\(a\)\(3\)\(h\)](#) as 40.0 percent of the terminated producer files reviewed did not contain a copy of the notification of termination that was sent to the producer.

3. Underwriting and Rating

a. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-33-40\(h\)](#) as 3.0 percent of the active private passenger automobile policies reviewed were quoted/issued by a producer who was not appointed.

***15** b. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-37-35\(l\)](#) and [58-37-40\(f\)](#) as an incorrect recoupment/allocation surcharge was applied on 12.0 percent of the active private passenger automobile policies reviewed.

c. The Company was reminded of the provisions of [NCGS 58-36-30\(a\)](#) and Rule 5 of the Personal Auto Manual as 5.0 percent of the active private passenger automobile policies reviewed were rated incorrectly.

d. The Company was reminded of the provisions of [NCGS 58-37-40\(e\)](#) and the North Carolina Reinsurance Facility Standard Practices Manual, Section 4, Rule 10 as it failed to utilize standard undeviated liability premiums in determining the recoupment/allocation surcharge on 2.0 percent of the active private passenger automobile policies reviewed.

e. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-33-5](#) and [58-33-26\(a\)](#) as 3.0 percent of the active homeowners/renters policies reviewed were quoted/issued by a producer who was not licensed in North Carolina.

f. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-33-40\(h\)](#) as 6.0 percent of the active homeowners/renters policies reviewed were quoted/issued by a producer who was not appointed.

g. The Company was reminded of the provisions of [NCGS 58-36-30\(a\)](#) as 4.0 percent of the active homeowner/renters policies reviewed were rated incorrectly.

h. The Company was reminded of the provisions of [NCGS 58-63-15\(1\)](#) as the declaration page for 2.0 percent of the active homeowners/renters policies reviewed inaccurately stated that the premium included an Academy Residence credit.

i. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-36-30\(a\)](#) as 18.0 percent of the active dwelling fire policies reviewed were rated incorrectly.

4. Terminations

a. The Company was reminded of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0104](#), and [19.0106\(a\)\(4\)\(h\)](#) as 1.0 percent of the cancelled private passenger automobile files reviewed did not contain accounting records that documented the cancellation return premium.

b. The Company was reminded of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0104](#) and [19.0106\(a\)\(4\)\(h\)](#) as 3.0 percent of the documents were not provided for review.

c. The Company was deemed to be in apparent violation of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0104](#), and [19.0106\(a\)\(4\)\(h\)](#) as 22.0 percent of the cancelled dwelling fire files reviewed did not contain proper documentation.

d. The Company was reminded of the provisions of [NCGS 58-39-55\(a\)](#) as they failed to provide notice of cancellation to the policyholder for 2.0 percent of the cancelled personal inland marine policies reviewed.

e. The Company was reminded of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0104](#), and [19.0106\(a\)\(4\)\(h\)](#) as 2.0 percent of the cancelled personal inland marine files reviewed did not contain documentation of the insured's request to cancel the policy.

***16** f. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-36-85\(b\)](#) as an ineligible reason for nonrenewal was used to terminate 44.4 percent of the nonrenewed private passenger automobile files reviewed.

g. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-37-50](#) as they did not offer liability coverage ceded to the North Carolina Reinsurance Facility when terminating 44.4 percent of the nonrenewed private passenger automobile policies reviewed.

h. The Company was reminded of the provisions of [NCGS 58-37-25\(a\)](#) as 6.0 percent of the applicants for personal automobile coverage were not offered liability coverage ceded to the North Carolina Reinsurance Facility when they did not meet the Company's voluntary guidelines.

TABLE OF STATUTES AND RULES

Statute/Rule	Title
NCGS 58-2-131	Examinations to be made; authority, scope, scheduling, and conduct of examinations.
NCGS 58-2-164	Rate evasion fraud; prevention programs.
NCGS 58-7-15	Kinds of insurance authorized.
NCGS 58-33-5	License required.
NCGS 58-33-26	General license requirements.
NCGS 58-33-40	Appointment of agents.
NCGS 58-33-56	Notification to Commissioner of termination.
NCGS 58-36-30	Deviations.
NCGS 58-36-85	Termination of a nonfleet private passenger motor vehicle insurance policy.
NCGS 58-37-1	Definitions.
NCGS 58-37-25	General obligations of insurers.
NCGS 58-37-35	The Facility; functions; administration.
NCGS 58-37-40	Plan of operation.

NCGS 58-37-50	Termination of insurance.
NCGS 58-39-25	Notice of insurance information practices.
NCGS 58-39-26	Federal privacy disclosure notice requirements.
NCGS 58-39-27	Privacy notice and disclosure requirement exceptions.
NCGS 58-39-55	Reasons for adverse underwriting decisions.
NCGS 58-63-15	Unfair methods of competition and unfair or deceptive acts or practices defined.
NCGS 20-309	Motor vehicle registration.
11 NCAC 4.0418	Total Losses on Motor Vehicles.
11 NCAC 4.0421	Handling of Loss and Claim Payments.
11 NCAC 19.0102	Maintenance of Records.
11 NCAC 19.0103	Complaint Records.
11 NCAC 19.0104	Policy Records.
11 NCAC 19.0106	Records Required for Examination.

CONCLUSION

An examination has been conducted on the market conduct affairs of USAA Casualty Insurance Company for the period January 1, 2006 through December 31, 2008 with analyses of certain operations of the Company being conducted through January 12, 2011. The Company's response to this report, if any, is available upon request.

***17** This examination was conducted in accordance with the North Carolina Department of Insurance and the National Association of Insurance Commissioners Market Regulation Handbook procedures, including analyses of Company operations in the areas of policyholder treatment, marketing, underwriting practices, terminations and claims practices.

In addition to the undersigned, James P. McQuillan, CPCU, AIT and Letha Lombardi, North Carolina Market Conduct Examiners, participated in this examination.

Respectfully submitted,
/s/ Norma M. Rafter

Norma M. Rafter, CPCU
Examiner-In-Charge
Market Regulation Division
State of North Carolina

I have reviewed this examination report and it meets the provisions for such reports prescribed by this Division and the North Carolina Department of Insurance.

/s/ Tracy M. Biehn
Tracy M. Biehn, LPCS, MBA
Deputy Commissioner
Market Regulation Division
State of North Carolina

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2014 WL 4680709

State of North Carolina

*1 Report on Market Conduct Examination

State Farm Mutual Automobile Insurance Company

State Farm Fire and Casualty Company

Bloomington, Illinois

May 2, 2014

MARKET CONDUCT REPORT

North Carolina Department of Insurance

 Image 1 within document in PDF format.

Report

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Raleigh, North Carolina

May 2, 2014

Honorable Wayne Goodwin

Commissioner of Insurance

Department of Insurance

State of North Carolina

Dobbs Building

430 N. Salisbury Street

Raleigh, North Carolina 27603

Honorable Andrew Boron

Director of Insurance

Illinois Department of Insurance

State of Illinois

320 W. Washington Street

Springfield, Illinois 62767-0001

Honorable Commissioner and Honorable Director:

Pursuant to your instructions and in accordance with the provisions of [North Carolina General Statute \(NCGS\) 58-2-131](#) through [58-2-134](#), a general examination has been made of the market conduct activities of

State Farm Mutual Automobile Insurance Company (NAIC #25178)

State Farm Fire and Casualty Company (NAIC #25143)

***2** NAIC Exam Tracking System Exam Number: NC299-M32

Bloomington, Illinois

hereinafter generally referred to as the Companies, at their claims office located at 4140 Parklake Avenue, Suite 400, Raleigh, North Carolina and at the North Carolina Department of Insurance (Department) office located at 11 S. Boylan Avenue, Raleigh, North Carolina. A report thereon is respectfully submitted.

FOREWORD

This examination reflects the North Carolina insurance activities of State Farm Mutual Automobile Insurance Company and State Farm Fire and Casualty Company. The examination is, in general, a report by exception. Therefore, much of the material reviewed will not be contained in this written report, as reference to any practices, procedures, or files that revealed no concerns were omitted.

SCOPE OF EXAMINATION

This examination commenced on September 30, 2013, and covered the period of January 1, 2009, through December 31, 2012, with analyses of certain operations of the Companies being conducted through May 2, 2014. All comments made in this report reflect conditions observed during the period of the examination.

The examination was arranged and conducted by the Department. It was made in accordance with Market Regulation standards established by the Department and procedures established by the National Association of Insurance Commissioners (NAIC) and accordingly included tests of policyholder treatment, marketing, underwriting practices, terminations, and claims practices.

It is the Department's practice to cite companies in violation of a statute or rule when the results of a sample show errors/noncompliance at or above the following levels: 0 percent for consumer complaints, producers who were not appointed and/or licensed, and the use of forms and rates/rules that were neither filed with nor approved by the Department; 7 percent for claims; and 10 percent for all other areas reviewed.

EXECUTIVE SUMMARY

This market conduct examination revealed concerns with the Companies' procedures and practices in the following areas:

Consumer Complaints - Response time to Departmental inquiries in excess of seven calendar days and NAIC code was not included on the Companies' response.

Policy Forms and Filings - Private Passenger Automobile and Homeowners: Use of unfiled consent to rate form and unfiled Adverse Underwriting Decision notice; Homeowners: Use of unfiled new business application and declaration page; Rental Dwelling: Use of unfiled new business application.

Termination of Producers - Incomplete file documentation.

Underwriting Practices - Private Passenger Automobile, Homeowners, and Commercial Automobile: Producers not properly appointed; Homeowners: Rating errors.

Terminations - Private Passenger Automobile Nonrenewals and Commercial Automobile Nonrenewals: Insufficient notice sent and incomplete file documentation.

***3** Specific violations related to each area of concern are noted in the appropriate section of this report. All North Carolina General Statutes and rules of the North Carolina Administrative Code cited in this report may be viewed on the North Carolina Department of Insurance Web site www.ncdoi.com, by clicking "INSURANCE DIVISIONS" then "Legislative Services".

This examination identified various non-compliant practices, some of which may extend to other jurisdictions. The Companies are directed to take immediate corrective action to demonstrate their ability and intention to conduct business in North Carolina according to its insurance laws and regulations. When applicable, corrective action for other jurisdictions should be addressed.

All statutory violations may not have been discovered or noted in this report. Failure to identify statutory violations in North Carolina or in other jurisdictions does not constitute acceptance of such violations.

COMPANY OPERATIONS AND MANAGEMENT

The Companies write a full array of commercial and personal lines property and casualty insurance coverages. They are licensed in 50 states, the District of Columbia, and Canada.

Direct written premium for the Companies' 2012 countrywide operations was \$47,957,081,943. North Carolina's property and casualty production for the same period was \$1,066,792,650. Premiums written in North Carolina between 2009 and 2012 increased approximately 0.6 percent. The charts below outline the Companies' mix of business for selected lines in 2012 and loss ratios in North Carolina for the examination period.

Line of Business	Written Premium	Percentage
Private Passenger Automobile	\$ 629,470,878	59.0
Homeowners	364,370,408	34.1
Commercial Multi-Peril	25,466,894	2.4
Inland Marine	14,605,422	1.4
Commercial Automobile	11616166	1.1
Other P&C	21,262,882	2.0
Total	\$1,066,792,650	100.0

Year	Written Premium	Earned Premium	Incurred Losses	Loss Ratio
2009	\$1,060,039,820	1,038,531,220	580,730,925	55.9
2010	\$1,074,996,571	1,066,203,942	655,186,206	61.5
2011	\$1,065,396,468	1,070,468,550	856,264,656	80.0
2012	\$1,066,792,650	1,053,784,810	639,437,109	60.7

POLICYHOLDER TREATMENT

Consumer Complaints

The Companies' complaint handling procedures were reviewed to determine compliance with applicable North Carolina statutes and rules. The Companies' complaint register was reconciled with a listing furnished by the Consumer Services Division of the Department. The Companies' complaint register was in compliance with the provisions of Title 11 of the North Carolina Administrative Code, (NCAC), Chapter 19, Section 0103.

*4 Fifty of the 1,852 complaints from the Department's listing were randomly selected for review. The distribution of complaints requiring a response to the Department is shown in the chart below.

Type of Complaint	Total
-------------------	-------

Underwriting	25
Claims	25
Total	50

The Companies' response to each complaint was deemed to be appropriate to the circumstances. Nine complaints were responded to in excess of seven calendar days; however, extensions were requested and granted for three of the complaints. The Companies were deemed to be in violation of the provisions of [11 NCAC 1.0602](#) as six of the complaints reviewed (12.0 percent error ratio) were responded to in excess of the seven calendar day requirement of this rule.

The Companies were deemed to be in violation of the provisions of [11 NCAC 4.0123](#) as three responses to Departmental inquiries (6.0 percent error ratio) did not include the Companies' NAIC codes.

The average service time to respond to a Departmental complaint was six calendar days. A chart of the Companies' response time follows:

Service Days	Number of Files	Percentage of Total
1 - 7	41	82.0
8 - 14	9	18.0
Total	50	100.0

MARKETING

Policy Forms and Filings

Policy forms and filings for the Companies were reviewed to determine compliance with appropriate North Carolina statutes and rules. We reviewed the following lines of business:

1. Private Passenger Automobile
2. Homeowners
3. Rental Dwelling
4. Commercial Automobile

Filings for the private passenger automobile and homeowners lines of business were made by the North Carolina Rate Bureau on behalf of the Companies. Deviations for these lines of business were made to the Department by the Companies. Filings for the commercial automobile line of business were made by the Insurance Services Office. Deviations were made to the Department by the Companies. The rental dwelling line of business is an independently filed program.

The Companies were deemed to be in violation of the provisions of [NCGS 58-3-150\(a\)](#) and [11 NCAC 10.0602](#) as the private passenger automobile policy consent to rate form had not been filed with and approved by the Department.

The Companies were deemed to be in violation of the provisions of [NCGS 58-3-150\(a\)](#) and [11 NCAC 10.0602](#) as the homeowners consent to rate form had not been filed with and approved by the Department.

The Companies were deemed to be in violation of the provisions of [NCGS 58-3-150\(a\)](#) and [58-39-55\(a\)](#) as the Adverse Underwriting Decision notice used for private passenger automobile terminations had not been filed with and approved by the Department.

The Companies were deemed to be in violation of the provisions of [NCGS 58-3-150\(a\)](#) and [58-39-55\(a\)](#) as the Adverse Underwriting Decision notice used for homeowners terminations had not been filed with and approved by the Department.

*5 The Companies were deemed to be in violation of the provisions of [NCGS 58-3-150\(a\)](#) and [11 NCAC 10.1201\(c\)](#) as the homeowners new business application and declaration page had not been filed with and approved by the Department.

The Companies were deemed to be in violation of the provisions of [NCGS 58-3-150\(a\)](#) and [11 NCAC 10.1201\(c\)](#) as the rental dwelling policy new business application had not been filed with and approved by the Department.

Producer Licensing

The Companies' procedures for appointment and termination of their producers were reviewed to determine compliance with the appropriate North Carolina statutes and rules. Fifty appointed and 50 terminated producer files were randomly selected for review from populations of 773 and 330, respectively.

The appointment forms reviewed were submitted to the Department in accordance with the timetables stipulated under the provisions of [NCGS 58-33-40](#).

Four terminated producer files were not terminated producers and were deemed invalid receipts. The review was based on the remaining 46 files. The Companies were deemed to be in violation of the provisions of [11 NCAC 19.0102\(a\)](#) and [19.0106\(a\) \(3\), \(g\)](#) as file documentation was incomplete for seven of the terminated producer files reviewed (15.2 percent error ratio). One file did not contain a copy of the confirmation of notification to the Commissioner within 30 days of the effective date of termination. Six files did not contain a copy of the termination letter sent to the producer.

UNDERWRITING PRACTICES

Overview

The Companies' marketing philosophy in North Carolina is directed to personal and commercial lines of business. The Companies provided the examiners with listings of the following types of active policies for the period under examination:

1. Private Passenger Automobile
2. Homeowners
3. Rental Dwelling
4. Commercial Automobile

A random selection of 400 policies was made from a total population of 763,469. Each policy was reviewed for adherence to underwriting guidelines, file documentation, and premium determination. Additionally, the policies were examined to determine compliance with the appropriate North Carolina statutes and rules, policy provisions, and the applicable policy manual rules.

Private Passenger Automobile

The Companies provided a listing of 432,907 active private passenger automobile policies issued during the period under examination. One hundred policies were randomly selected for review.

The Companies' private passenger automobile policies were written on a six-month basis. Liability coverages were written utilizing manual and deviated rates. Physical damage coverages were written using manual, deviated, or on a consent to rate basis. Risk placement was determined by the Companies' underwriting guidelines and the underwriter. No discrepancies were noted in the Companies' use of their underwriting guidelines. All policy files contained sufficient documentation to support the Companies' classification of the risk. The premium for all policies reviewed was deemed to be correct.

*6 The Companies were deemed to be in violation of the provisions of [NCGS 58-33-26](#) and [58-33-40](#) as the producer was not properly appointed by the Companies for one of the active private passenger automobile files reviewed (1.0 percent error ratio).

Homeowners

The Companies provided a listing of 284,750 active homeowners policies issued during the period under examination. One hundred policies were randomly selected for review.

The Companies' homeowners coverages were written on an annual basis. The coverages were written utilizing manual, deviated, or on a consent to rate basis. Risk placement was determined by the Companies' underwriting guidelines and the underwriter. No discrepancies were noted in the Companies' use of their underwriting guidelines. All policy files contained sufficient documentation to support the Companies' classification of the risk.

The Companies were deemed to be in violation of the provisions of [NCGS 58-36-30\(a\)](#) as 59 policies reviewed (59.0 percent error ratio) contained a total of 66 rating errors. The rating errors consisted of the following:

- Personal property replacement cost was calculated incorrectly on 42 policies.
- An incorrect protective device credit was applied on 15 policies.
- An incorrect deductible factor was applied on five policies.
- The protective device credit applied on two policies was in excess of the maximum allowed.
- An incorrect base rate was applied on two policies.

The rating errors resulted in five premium overcharges and 53 premium undercharges to the insureds. One policy's premium was not affected due to equally offsetting errors. At the request of the examiners, refunds in the amount of \$12.06 were issued by the Companies for the overcharges. The remaining premiums were deemed correct.

The Companies were deemed to be in violation of the provisions of [NCGS 58-33-26](#) and [58-33-40](#) as the producer was not properly appointed by the Companies for one of the active files reviewed (1.0 percent error ratio).

Rental Dwelling

The Companies provided a listing of 33,685 active rental dwelling policies issued during the period under examination. One hundred policies were randomly selected for review.

The Companies' rental dwelling policies were written on an annual basis. Coverages were written utilizing independent rates. Risk placement was determined by the Companies' underwriting guidelines and the underwriter. No discrepancies were noted in the Companies' use of their underwriting guidelines. All policy files reviewed contained sufficient documentation to support the Companies' classification of the risk. The premium for all policy files reviewed was deemed to be correct.

Commercial Automobile

The Companies provided a listing of 12,127 active commercial automobile policies issued during the period under examination. One hundred policies were randomly selected for review.

*7 The Companies' commercial automobile coverages were written utilizing manual and deviated rates. Policies were written on a six-month basis. Risk placement was determined by the Companies' underwriting guidelines and the underwriter. No discrepancies were noted in the Companies' use of their underwriting guidelines. All policy files contained sufficient documentation to support the Companies' application of their rates and premiums charged.

The Companies were deemed to be in violation of the provisions of [NCGS 58-33-26](#) and [58-33-40](#) as the producer was not properly appointed by the Companies for one of the active files reviewed (1.0 percent error ratio).

TERMINATIONS

Overview

The Companies' termination procedures were reviewed to determine compliance with the appropriate North Carolina statutes and rules, policy provisions, and the applicable policy manual rules. We reviewed the following lines of business:

1. Private Passenger Automobile
2. Homeowners
3. Rental Dwelling
4. Commercial Automobile

Special attention was placed on the validity and reason for termination, timeliness in issuance of the termination notice, policy refund (where applicable), and documentation of the policy file. A total of 511,648 policies were terminated during the period under examination. The examiners randomly selected 658 terminations for review.

Private Passenger Automobile Cancellations

One hundred cancelled private passenger automobile policies were randomly selected for review from a population of 219,581.

The review revealed the following reasons for cancellation:

Reason for Cancellation	Number of Policies	Percentage
-------------------------	--------------------	------------

Insured's request	64	64.0
Nonpayment of premium	36	36.0
Total	100	100.0

The Companies were not required to issue cancellation notices for 64 of the cancellations reviewed as these policies were cancelled at the request of the insured. Cancellation notices for the remaining 36 policies stated the specific reason for cancellation. The Companies issued the refunds in a timely manner. The final area of this review encompassed documentation of the policy file. All policy files reviewed contained sufficient documentation to support the action taken by the Companies. The Companies sent the North Carolina Notice of Termination form (FS-4) to the North Carolina Division of Motor Vehicles (DMV) when liability coverage was cancelled.

Homeowners Cancellations

One hundred cancelled homeowners policies were randomly selected for review from a population of 218,833.

The reason for cancellation was deemed valid for all policies reviewed. The review revealed the following reasons for cancellation:

Reason for Cancellation	Number of Policies	Percentage
Insured's request	55	55.0
Nonpayment of premium	28	28.0
Coverage rewritten	14	14.0
Underwriting reasons	3	3.0
Total	100	100.0

*8 The Companies were not required to issue cancellation notices for 69 of the cancellations reviewed as these policies were cancelled at the request of the insured or the coverage was rewritten. Cancellation notices for the remaining 31 policies stated the specific reason for cancellation. All insureds and mortgagees were given proper and timely notification of cancellation. All refunds were deemed correct.

The final area of this review encompassed documentation of the policy file. All policy files reviewed contained sufficient documentation to support the action taken by the Companies.

Rental Dwelling Cancellations

One hundred cancelled rental dwelling policies were randomly selected for review from a population of 40,458.

The reason for cancellation was deemed valid for all policies reviewed. The review revealed the following reasons for cancellation:

Reason for Cancellation	Number of Policies	Percentage
Insured's request	73	73.0
Nonpayment of premium	21	21.0
Coverage rewritten	5	5.0
Underwriting reasons	1	1.0
Total	100	100.0

The Companies were not required to issue cancellation notices for 78 of the cancellations reviewed as these policies were cancelled at the request of the insured, or the coverage was rewritten. Cancellation notices for the remaining 22 policies stated the specific reason for cancellation.

All premium refunds were deemed correct. The Companies issued the refunds in a timely manner.

The final area of this review encompassed documentation of the policy file. All policy files reviewed contained sufficient documentation to support the action taken by the Companies.

Commercial Automobile Cancellations

One hundred cancelled commercial automobile policies were randomly selected for review from a population of 7,897.

The reason for cancellation was deemed valid for all policies reviewed. The review revealed the following reasons for cancellation:

Reason for Cancellation	Number of Policies	Percentage
Insured's request	81	81.0
Nonpayment of premium	19	19.0
Total	100	100.0

The Companies were not required to issue cancellation notices for 81 of the cancellations reviewed as these policies were cancelled at the request of the insured. Cancellation notices for the remaining 19 policies stated the specific reason for cancellation.

All premium refunds were deemed correct. The Companies issued the refunds in a timely manner.

The final area of this review encompassed documentation of the policy file. All policy files reviewed contained sufficient documentation to support the action taken by the Companies. The Companies sent the FS-4 to the DMV when liability coverage was cancelled.

Private Passenger Automobile Nonrenewals

*9 Fifty nonrenewed private passenger automobile policies were randomly selected for review from a population of 409.

The reason for nonrenewal was deemed valid for all policies reviewed. The review revealed the following reasons for nonrenewal:

Reason for Nonrenewal	Number of Policies	Percentage
Underwriting reasons	49	98.0
Producer no longer represents company	1	2.0
Total	50	100.0

The nonrenewal notices for the policies reviewed stated the specific reason for nonrenewal. The Companies were deemed to be in violation of the provisions of [NCGS 58-36-85\(c\)](#) as the notice of nonrenewal was not sent at least 60 days prior to the termination date for six policies reviewed (12.0 percent error ratio).

The final area of this review encompassed documentation of the policy file. The Companies were deemed to be in violation of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0104](#), and [19.0106\(a\)\(4\)](#) as six files did not contain a copy of the insured's notice of termination or proof of mailing of cancellation (12.0 percent error ratio). The remaining files reviewed contained sufficient documentation to support the action taken by the Companies. The Companies sent the FS-4 to the DMV when liability coverage was cancelled.

Homeowners Nonrenewals

One hundred nonrenewed homeowners policies were randomly selected for review from a population of 21,140. One file was not a nonrenewal and was deemed an invalid receipt. We reviewed the remaining 99 files.

The reason for nonrenewal was deemed valid for all policies reviewed. The review revealed the following reasons for nonrenewal:

Reason for Nonrenewal	Number of Policies	Percentage
Underwriting reasons	96	96.0
Risk no longer eligible	3	3.0
Total	99	100.0

The nonrenewal notices reviewed stated the specific reason for nonrenewal. The insureds and mortgagees were given proper and timely notification of nonrenewal.

The final area of this review encompassed documentation of the policy file. All policy files reviewed contained sufficient documentation to support the action taken by the Companies.

Rental Dwelling Nonrenewals

Fifty nonrenewed rental dwelling policies were randomly selected for review from a population of 2,581.

The reason for nonrenewal was deemed valid for all policies reviewed. The review revealed the following reason for nonrenewal:

Reason for Nonrenewal	Number of Policies	Percentage
Underwriting reasons	50	100.0
Total	50	100.0

The nonrenewal notices for the policies reviewed stated the specific reason for nonrenewal.

*10 The final area of this review encompassed documentation of the policy file. All policy files reviewed contained sufficient documentation to support the action taken by the Companies.

Commercial Automobile Nonrenewals

All nonrenewed commercial automobile policies were selected for review from a population of eight.

The reason for nonrenewal was deemed valid for all policies reviewed. The review revealed the following reason for nonrenewal:

Reason for Nonrenewal	Number of Policies	Percentage
Underwriting reasons	8	100.0
Total	8	100.0

The nonrenewal notices for the policies reviewed stated the specific reason for nonrenewal.

The Companies were deemed to be in violation of the provisions of [NCGS 58-41-20\(b\)](#) as the nonrenewal notice was not sent at least 45 days prior to the termination date for one policy reviewed (12.5 percent error ratio).

The final area of this review encompassed documentation of the policy file. The Companies were deemed to be in violation of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0104](#), and [19.0106\(a\)\(4\)](#), (g) as one file reviewed did not contain a copy of the nonrenewal notice and proof of mailing (12.5 percent error ratio). The remaining files reviewed contained sufficient documentation to support the action taken by the Companies. The Companies sent the FS-4 to the DMV when liability coverage was cancelled.

Declined/Rejected

Fifty declined/rejected applications were randomly selected for review from a population of 741. The reason for declination/rejection was deemed valid for all the applications reviewed. The review revealed the following reason for declination/rejection.

Reason for Declination/Rejection	Number of Declinations/Rejections
----------------------------------	-----------------------------------

Underwriting reasons	50
Total	50

CLAIMS PRACTICES

Overview

The Companies' claims practices were reviewed to determine compliance with the appropriate North Carolina statutes and rules and policy provisions. The review encompassed paid, automobile medical payment, bodily injury, closed without payment, subrogated, total loss settlement, and litigated claims.

Eight hundred fifty claims were randomly selected for review from a population of 744,675.

Paid Claims

Three hundred paid first party automobile physical damage, first party property damage, and third party property damage claims were randomly selected for review from a population of 458,753. The claim files were reviewed to determine compliance with the provisions of [NCGS 58-63-15\(11\)](#) for timeliness of payment, supporting documentation and accuracy of payment.

***11** The following types of claims were reviewed and the average payment time is noted in calendar days:

Type of Claim	Payment Time
Automobile physical damage	10.0
First party (excluding automobile physical damage)	12.0
Third party property damage	15.0

All payments issued by the Companies were deemed to be accurate. Deductibles were correctly applied and depreciation taken was reasonable. All claim files reviewed contained documentation to support the Companies' payments. The documentation consisted of appraisals, estimates, repair bills, or inventory listings.

Automobile Medical Payment Claims

One hundred automobile medical payment claims were randomly selected for review from a population of 33,977. The claim files were reviewed to determine compliance with the provisions of [NCGS 58-63-15\(11\)](#) and to see if the Companies had engaged in any unfair claims practices. The review of automobile medical payment claims disclosed no violations of the provisions of [NCGS 58-63-15\(11\)](#).

Bodily Injury Claims

One hundred bodily injury claims were randomly selected for review from a population of 44,022. The claim files were reviewed to determine compliance with the provisions of [NCGS 58-63-15\(11\)](#) to see if the Companies had engaged in any unfair claims practices. The review of bodily injury claims disclosed no violations of the provisions of [NCGS 58-63-15\(11\)](#).

Closed Without Payment Claims

One hundred closed without payment claims were randomly selected for review from a population of 102,822. The claim files were reviewed to determine compliance with the provisions of [NCGS 58-63-15\(11\)](#) to see if the Companies' reasons for closing the claims without payment were valid.

The claim files reviewed contained documentation that supported the Companies' reasons for closing the claims without payment. All reasons for denial or closing the files without payment were deemed valid. Claims were denied on an average of 14.5 calendar days for the four-year period. The review of the closed without payment claims disclosed no violations of the provisions of [NCGS 58-63-15\(11\)](#).

Subrogated Claims

One hundred subrogated claims were randomly selected for review from a population of 43,484. The claim files were reviewed to determine compliance with the provisions of [NCGS 58-63-15\(11\)](#) to see if the insured's deductible was properly reimbursed by the Companies when subrogation was successful. All reimbursements were deemed to be correct and were issued on a four-year average of three calendar days from the date the Companies collected the monies. The review of subrogated claims disclosed no violations of the provisions of [NCGS 58-63-15\(11\)](#).

Total Loss Settlement Claims

One hundred total loss settlement claims were randomly selected for review from a population of 57,557. The claim files were reviewed to determine compliance with the provisions of [NCGS 58-63-15\(11\)](#) to see if the settlements were equitable and timely.

***12** The Companies primarily used CCC Information Services, Inc. in addition to on-site independent adjusters to establish the actual cash value of totaled vehicles. All settlements were deemed equitable.

The Companies settled all of the claims reviewed in a timely manner. The payments were issued on a four-year average of 12 calendar days. The review of total loss settlement claims disclosed no violations of the provisions of [NCGS 58-63-15\(11\)](#), [11 NCAC 4.0418](#), or [4.0421](#).

Litigated Claims

Fifty litigated claims were randomly selected for review from a population of 4,060. The claim files were reviewed to determine compliance with the provisions of [NCGS 58-63-15\(11\)](#) and whether the Companies had engaged in any unfair claims practices. The review of litigated claims disclosed no violation of the provisions of [NCGS 58-63-15\(11\)](#).

CONCLUSION

An examination has been conducted on the market conduct affairs of State Farm Mutual Automobile Insurance Company and State Farm Fire and Casualty Company for the period January 1, 2009, through December 31, 2012, with analyses of certain operations of the Companies being conducted through May 2, 2014.

This examination was conducted in accordance with the North Carolina Department of Insurance and the National Association of Insurance Commissioners Market Regulation Handbook procedures, including analyses of the Companies' operations in the areas of policyholder treatment, marketing, underwriting practices, terminations, and claims practices.

In addition to the undersigned, Kelvin A. Owens and Sharon O'Quinn, North Carolina Market Conduct Examiners, participated in this examination.

Respectfully submitted,
/s/ Norma M. Rafter
Norma M. Rafter, CPCU
Examiner-In-Charge
Market Regulation Division
State of North Carolina

I have reviewed this examination report and it meets the provisions for such reports prescribed by this Division and the North Carolina Department of Insurance.

/s/ Tracy M. Biehn
Tracy M. Biehn, LPCS, MBA
Deputy Commissioner
Market Regulation Division
State of North Carolina

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2011 WL 7143955

State of North Carolina

*1 Report on Market Conduct Examination of the
Allstate Property and Casualty Insurance Company

Northbrook, Illinois

July 25, 2011

MARKET CONDUCT REPORTS

North Carolina Department of Insurance



Image 1 within document in PDF format.

Report

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Raleigh, North Carolina

July 25, 2011

Honorable Jack Messmore

Acting Director of Insurance

Illinois Department of Insurance

State of Illinois

320 W. Washington St.

Springfield, Illinois 62767-0001

Honorable Wayne Goodwin

Commissioner of Insurance

Department of Insurance

State of North Carolina

Dobbs Building

430 N. Salisbury Street

Raleigh, North Carolina 27603

Honorable Commissioners:

Pursuant to your instructions and in accordance with the provisions of [North Carolina General Statute \(NCGS\) 58-2-131](#), a general examination has been made of the market conduct activities of

ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY (NAIC #17230)

NAIC Exam Tracking System Exam Number: NC170-M75

***2** Springfield, Illinois

hereinafter generally referred to as the Company, located at the Company's claims office located at 3150 Spring Forest Road, Raleigh, North Carolina and at the North Carolina Department of Insurance (Department) office located at 11 S. Boylan Avenue, Raleigh, North Carolina. A report thereon is respectfully submitted.

FOREWORD

This examination reflects the North Carolina insurance activities of Allstate Property and Casualty Insurance Company. The examination is, in general, a report by exception. Therefore, much of the material reviewed will not be contained in this written report, as reference to any practices, procedures, or files that manifested no improprieties were omitted.

SCOPE OF EXAMINATION

This examination commenced on April 4, 2011 and covered the period of January 1, 2007 through December 31, 2009 with analyses of certain operations of the Company being conducted through July 25, 2011. All comments made in this report reflect conditions observed during the period of the examination.

The examination was arranged and conducted by the Department. It was made in accordance with Market Regulation standards established by the Department and procedures established by the National Association of Insurance Commissioners (NAIC) and accordingly included tests of policyholder treatment, marketing, underwriting practices, terminations and claims practices.

It is the Department's practice to cite companies in apparent violation of a statute or rule when the results of a sample show errors/noncompliance at or above the following levels: 0 percent for consumer complaints, sales and advertising, producers who were not appointed and/or licensed and the use of forms and rates/rules that were neither filed with nor approved by the Department; 7 percent for claims; and 10 percent for all other areas reviewed. When errors are detected in a sample, but the error rate is below the applicable threshold for citing an apparent violation, the Department issues a reminder to the company.

EXECUTIVE SUMMARY

This market conduct examination revealed concerns with Company procedures and practices in the following areas:

Consumer Complaints - complaints not listed on the company's complaint register, response time to Departmental inquiries, NAIC company code was not included on Company response.

Policy Forms and Filings - unfiled application, consent to rate form and termination notice.

Underwriting and Rating - applications accepted from a producer who was not appointed, signed consent to rate forms not in file and rating errors for private passenger automobile.

Terminations - proper notification not given.

Specific violations related to each area of concern are noted in the appropriate section of this report. All North Carolina General Statutes and rules of the North Carolina Administrative Code cited in this report may be viewed on the North Carolina Department of Insurance Web site www.ncdoi.com by clicking "NCDOI DIVISIONS" then "Legislative Services".

***3** This examination identified various non-compliant practices, some of which may extend to other jurisdictions. The Company is directed to take immediate corrective action to demonstrate its ability and intention to conduct business in North Carolina according to its insurance laws and regulations. When applicable, corrective action for other jurisdictions should be addressed.

All unacceptable or non-compliant practices may not have been discovered or noted in this report. Failure to identify or criticize improper or non-compliant business practices in North Carolina or in other jurisdictions does not constitute acceptance of such practices. Examination report findings that do not reference specific insurance laws, regulations, or bulletins are presented to improve the Company's practices and ensure consumer protection.

COMPANY OVERVIEW

History and Profile

Allstate Property and Casualty Insurance Company was incorporated on February 14, 1985 under the laws of Illinois and commenced business on April 1, 1985. The Company is a wholly owned subsidiary of Allstate Insurance Company, which in turn is owned by Allstate Insurance Holdings, LLC, a Delaware limited liability company.

Company Operations and Management

The Company is a writer of private passenger automobile insurance and opened for new business in North Carolina in January 2007. The Company is licensed in the District of Columbia and all states except Hawaii, Massachusetts and New Jersey.

Direct written premium for the Company's 2009 countrywide property and casualty operations was \$4,936,409,391. North Carolina's production for the same period was \$117,581,300. Premiums written in North Carolina between 2007 and 2009 increased approximately 235.2 percent. The charts below outline the Company's mix of business for selected lines in 2009 and loss ratios in North Carolina for the examination period.

Line of Business	Written Premium	Percentage
Private Passenger Automobile Liability	\$67,440,642	57.4
Private Passenger Automobile Physical Damage	\$50,140,658	42.6
Total	\$117,581,300	100.0

Year	Written Premium	Earned Premium	Incurred Losses*	Loss Ratio
2007	\$ 35,081,352	\$ 22,963,889	\$17,611,556	76.7
2008	\$ 77,410,097	\$ 67,905,707	\$48,725,298	71.8
2009	\$117,581,300	\$107,720,110	\$71,616,460	66.5

* Does not include IBNRs

Certificates of Authority

The Certificates of Authority issued to the Company were reviewed for the period under examination. These certificates were reviewed to determine compliance with the provisions of [NCGS 58-7-15](#). The Company's writings in North Carolina were deemed to be in compliance with the authority granted.

Disaster Recovery Procedures

*4 The Company's Business Continuity Planning Team has developed comprehensive standards to ensure that consistent and thorough plans are developed for the recoverability of the business unit's work-areas as well as the technology which supports critical business processes in the event of disaster. The standards cover all portions of disaster recovery planning and related environments within Allstate or operated or contracted with a third party by Allstate.

The backup and storage of electronic media, tapes, disks, etc. in a secure off-site location ensures that critical information is available and recoverable in the event of the unavailability of an Allstate data processing facility. All disaster recovery plans must be reviewed, at a minimum, annually. Updates must be performed sooner if technology components, personnel, or recovery strategies have changed.

Rate Evasion Procedures

The Company has established procedures to address nonfleet private passenger automobile insurance rate evasion fraud by identifying any ineligible risk as defined in [NCGS 58-37-1\(4a\)](#) and verifying residency of the policyholder who owns a motor vehicle registered or principally garaged in North Carolina. The Company was found to be in compliance with the provisions of [NCGS 58-2-164](#).

POLICYHOLDER TREATMENT

Consumer Complaints

The Company's complaint handling procedures were reviewed to determine compliance with applicable North Carolina statutes and rules.

The Company's complaint register was reconciled with a listing furnished by the Consumer Services Division of the Department. The Company was deemed to be in apparent violation of the provisions of Title 11 of the North Carolina Administrative Code, (NCAC), Chapter 19, Section 0103 as 1 complaint (2.0 percent error ratio) was not listed on the Company's complaint register.

Fifty of the 92 complaints from the Department's listing were randomly selected and received for review. The distribution of complaints requiring a response to the Department is shown in the chart below.

Type of Complaint	Total
Underwriting	33
Administrative	10
Claims	7
Total	50

The Company's response to each complaint was deemed to be appropriate to the circumstances. The Company was deemed to be in apparent violation of the provisions of [11 NCAC 1.0602](#) as 9 of the complaints reviewed (18.0 percent error ratio) were responded to in excess of the 7 calendar day requirement of this rule.

The Company was deemed to be in apparent violation of the provisions of [11 NCAC 4.0123](#) as 3 responses to Departmental inquiries (6.0 percent error ratio) did not contain the Company's NAIC company code.

The average service time to respond to a Departmental complaint was 8 calendar days. A chart of the Company's response time follows:

Service Days	Number of Files	Percentage of Total
--------------	-----------------	---------------------

1 - 7	27	54.0
8 - 14	19	38.0
15 - 21	4	8.0
Total	50	100.0

Privacy of Financial and Health Information

*5 The Company provided privacy of financial and health information documentation for the examiners' review. The Company exhibited policies and procedures in place so that nonpublic personal financial or health information is not disclosed unless the customer or consumer has authorized the disclosure. The Company was found to be compliant with the provisions of NCGS 58-39-25, 58-39-26, and 58-39-27.

MARKETING

Policy Forms and Filings

Policy forms and filings for the Company were reviewed to determine compliance with appropriate North Carolina statutes and rules. Filings for the private passenger automobile line of business were made by the North Carolina Rate Bureau on behalf of the Company. Deviations for this line of business were made to the Department by the Company.

The Company was deemed to be in apparent violation of the provisions of NCGS 58-3-150 and 11 NCAC 10.1201(c) as the private passenger automobile application being used was not the application that was filed with and approved by the Commissioner. The Company was deemed to be in apparent violation of the provisions of NCGS 58-3-150 and 11 NCAC 10.0602 as the private passenger automobile consent to rate form being used was not the form that was filed with and approved by the Commissioner. The Company was deemed to be in apparent violation of the provisions of NCGS 58-3-150 and 58-36-85(c) as the Notice of Termination had not been filed with and approved by the Commissioner.

Sales and Advertising

Sales and advertising practices of the Company were reviewed to determine compliance with the provisions of NCGS 58-63-15.

The Company creates a range of advertising material that it makes available to its agents to order through a repository of all ads for print and broadcast media called Co-op Build an Ad Site. Agents go to the site, select the product line, ad message (headline and body copy) and customize their own ads using the Allstate brand. Agents are not allowed to create their own ads using the Allstate brand. Agents must use the Allstate approved materials.

The examiners reviewed advertisements, producer marketing solicitation kits, telemarketing scripts, bulletins and brochures that are provided for promotional use. The Company also maintains an internet site: www.allstate.com. The website provides background information relative to its operations, as well as products and services offered.

No unfair or deceptive trade practices were noted in this segment of the examination.

Producer Licensing

The Company's procedures for appointment and termination of its producers were reviewed to determine compliance with the appropriate North Carolina statutes and rules. Fifty appointed and 50 terminated producer files were randomly selected and received for review from populations of 2,520 and 1,102, respectively.

All appointment forms reviewed were submitted to the Department in accordance with the timetables stipulated under the provisions of [NCGS 58-33-40](#). The Company was reminded of the provisions of [11 NCAC 19.0102 \(a\)](#) and [19.0106\(a\)\(3\)\(h\)](#) as confirmation of termination was not provided for 1 producer reviewed (2 percent error ratio). The Company was reminded of the provisions of [NCGS 58-33-56\(d\)](#) as the notification of termination letter was not sent to 2 producers reviewed (4 percent error ratio).

Agency Management

*6 The marketing effort in North Carolina is under the direction of the Regional Marketing Senior Manager located at the regional office in Atlanta, Georgia. The Company has 342 active agencies with approximately 987 producers appointed in North Carolina as well as 1 full time marketing representative.

The Territorial Sales Leader, located at the Allstate office in Greensboro, North Carolina, is responsible for the activities of the agency force as well as agent appointments, terminations and licensing. Formal agency reviews are conducted annually by the Field Sales Leaders.

UNDERWRITING PRACTICES

Overview

The Company's marketing philosophy in North Carolina focuses on the private passenger automobile line of business. The Company's private passenger automobile policies were reviewed for adherence to underwriting guidelines, file documentation and premium determination. Additionally, the policies were examined to determine compliance with the appropriate North Carolina statutes and rules, policy provisions and the applicable policy manual rules.

Private Passenger Automobile

The Company provided a listing of 94,726 active private passenger automobile policies issued during the period under examination. One hundred policies were randomly selected and received for review.

The Company's private passenger automobile policies were written on a 6 or 12 month basis. Liability coverages were written utilizing manual rates. Physical damage coverages were written using both manual rates and on a consent to rate basis. Risk placement was determined by the Company's underwriting guidelines and the underwriter. No discrepancies were noted in the Company's use of its underwriting guidelines.

The Company was deemed to be in apparent violation of the provisions of [NCGS 58-33-40](#) as 3 applications reviewed (3.0 percent error ratio) were accepted from a producer who was not appointed.

The Company was deemed to be in apparent violation of the provisions of [NCGS 58-36-30\(a\)](#) and [58-37-35\(l\)](#) as 28 policies reviewed (28.0 percent error ratio) contained multiple rating errors. The rating errors consisted of the following:

- Incorrect company deviations were applied on 14 policies.
- Incorrect territory was used to rate 9 policies.

- Combined Uninsured/Underinsured Motorist coverage was provided on 3 policies that were not eligible.
- Incorrect Safe Driver Incentive Plan Points were applied on 3 policies.
- Vehicles were classified incorrectly on 1 policy.
- Multi-car discount was applied on 1 policy that was not eligible.
- Inexperienced Operator Surcharge was not applied on 1 policy.
- Comprehensive premium was calculated incorrectly on 1 policy.
- Disability Income Protection coverage was calculated incorrectly on 1 policy.

The rating errors resulted in 15 premium undercharges and 9 premium overcharges to the insureds. At the request of the examiners, refunds in the amount of \$368.94 were issued by the Company for the overcharges. The remaining premiums charged were deemed correct.

*7 The Company was deemed to be in apparent violation of the provisions of 11 NCAC 10.0602(a) as 10 files reviewed (10.0 percent error ratio) did not contain a copy of the signed consent to rate form for physical damage coverages. The Company was reminded of the provisions of 11 NCAC 19.0102(a)(b), 19.0104 and 19.0106 (a)(4)(g) as 4 files reviewed (4.0 percent error ratio) did not contain proper file documentation.

TERMINATIONS

Overview

The Company's termination procedures for its private passenger automobile policies were reviewed to determine compliance with the appropriate North Carolina statutes and rules, policy provisions and the applicable policy manual rules. Special attention was placed on the validity and reason for termination, timeliness in issuance of the termination notice, policy refund (where applicable) and documentation of the policy file. A total of 41,319 policies were terminated during the period under examination. The examiners randomly selected 128 terminations for review.

Private Passenger Automobile Cancellations

One hundred cancelled private passenger automobile policies were randomly selected and received for review from a population of 41,291.

The reason for cancellation was deemed valid for all policies reviewed. The review revealed the following reasons for cancellation:

Reason for Cancellation	Number of Policies	Percentage
Nonpayment of premium	48	48.0
Insured's request	42	42.0
Finance company request	9	9.0

Rewritten	1	1.0
Total	100	100.0

The Company was not required to issue cancellation notices for 43 of the cancellations reviewed as these policies were cancelled at the request of the insured or coverage was rewritten.

The Company was reminded of the provisions of [NCGS 58-36-30\(a\)](#) and Rule 10 of the North Carolina Personal Automobile Manual as 3 policies reviewed (3.0 percent error ratio) were cancelled using an incorrect cancellation method. Two of the errors resulted in overstatement of refund and 1 error resulted in an understatement of refund to the insureds. At the request of the examiners, the Company issued an additional refund in the amount of \$9.43. The remaining premium refunds were deemed correct. The Company issued refunds in a timely manner.

The Company was reminded of the provisions of [NCGS 58-35-85\(1\)\(2\)](#) as 8 policies reviewed (8.0 percent error ratio) contained no documentation verifying that the premium finance company notified the insured not less than 10 days prior to cancellation of coverage or sent the insurer a request for cancellation.

The Company was reminded of the provisions of [NCGS 58-36-85\(b\)\(3\)](#) as 6 policies reviewed (6.0 percent error ratio) contained no documentation verifying that the insured requested cancellation of the policy.

*8 The Company was reminded of the provisions of [NCGS 20-309](#) as the North Carolina Notice of Termination form (FS-4) was not submitted to the North Carolina Division of Motor Vehicles (DMV) when liability coverages were cancelled for 7 policies reviewed (7.0 percent error ratio).

The remaining policy files reviewed contained sufficient documentation to support action taken by the Company.

Private Passenger Automobile Nonrenewals

The entire population of 28 nonrenewed private passenger automobile policies was selected and received for review.

The reason for nonrenewal was deemed valid for all policies reviewed. The review revealed the following reasons for nonrenewal:

Reason for Nonrenewal	Number of Policies	Percentage
Underwriting reasons	24	85.7
Risk no longer eligible	4	14.3
Total	28	100.0

The nonrenewal notices for the policies reviewed stated the specific reason for nonrenewal. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-36-85\(c\)](#) as the notice of nonrenewal was not issued at least 60 days prior to the termination date for 3 policies reviewed (10.7 percent error ratio). The Company was reminded of the provisions of [NCGS 58-36-85\(b\)](#) as the notice of nonrenewal was not issued in writing for 1 policy reviewed (3.6 percent error ratio).

The final area of this review encompassed documentation of the policy file. The Company sent the FS-4 to the DMV when liability coverages were nonrenewed. The Company was deemed to be in compliance with the provisions of [NCGS 20-309](#).

Declinations/Rejections

The Company reported coverage is bound at point of sale so they do not decline or reject.

CLAIMS PRACTICES

Overview

The Company's claims practices were reviewed to determine compliance with the appropriate North Carolina statutes and rules and policy provisions. The review encompassed paid, automobile medical payment, first and third party bodily injury, closed without payment, subrogated, total loss settlement and litigated claims.

Claims service in North Carolina is under the direction of the Claim Field Director located in Atlanta, Georgia and is provided from four Market Claims Offices (MCO) in North Carolina. The combined staff for the four offices is comprised of the 4 market claim managers, 9 team leaders, 32 claim managers, 253 claim adjusters, 278 claim processors and 36 clerical/administrative personnel.

Company adjusters and independent adjusters (Auto Field Inspections) provide the claims service. Independent adjusters have no check or draft authority. The Company agency force does not adjust any claims and does not have claims draft authority. With regard to total losses, a salvage log is maintained by the Carolina Auto MCO leadership.

*9 Five hundred thirty-seven claims were randomly selected for review from a population of 68,504.

Paid Claims

The examiners randomly selected and received 200 of the 29,130 first party automobile physical damage and third party property damage claims paid during the period under examination. The claim files were reviewed for timeliness of payment, supporting documentation and accuracy of payment.

The following types of claims were reviewed and the average payment time is noted in calendar days:

Type of Claim	Payment Time
Automobile physical damage	20.0
Third party property damage	24.0

All payments issued by the Company were deemed to be accurate. Deductibles were correctly applied and depreciation taken was reasonable.

All claim files reviewed contained documentation to support the Company's payments. The documentation consisted of appraisals, estimates, repair bills, or inventory listings.

First party claims were not investigated in a timely manner for 2 claims (2.0 percent error ratio). First party claims were not appraised in a timely manner for 1 claim (1.0 percent error ratio). First party claims were not paid in a timely manner for

3 claims (3.0 percent error ratio). Third party claims were not investigated in a timely manner for 2 claims (2.0 percent error ratio). Third party claims were not appraised in a timely manner for 1 claim (1.0 percent error ratio). Third party claims were not paid in a timely manner for 1 claim (1.0 percent error ratio). This matter could result in an apparent violation of the provisions of [NCGS 58-63-15\(11\)](#) if the occurrence is of such frequency as to be considered a general business practice.

Automobile Medical Payment Claims

Fifty automobile medical payment claims were randomly selected and received for review from a population of 2,644. The claim files were reviewed to determine if the Company had engaged in any unfair claims practices. An emergency room bill was not paid for 1 claim (2.0 percent error ratio). At the request of the examiners, the medical provider was issued payment in the amount of \$205.00. This matter could result in an apparent violation of the provisions of [NCGS 58-63-15\(11\)](#) and [11 NCAC 4.0421\(1\)](#) if the occurrence is of such frequency as to be considered a general business practice.

First and Third Party Bodily Injury Claims

Fifty first and third party bodily injury claims were randomly selected and received for review from a population of 4,908. The claim files were reviewed to determine whether the Company had engaged in any unfair claims practices. The review of first and third party bodily injury claims disclosed no apparent violations of the provisions of [NCGS 58-63-15](#).

Closed Without Payment Claims

One hundred closed without payment claims were randomly selected and received for review from a population of 27,329. The claim files were reviewed to determine if the Company's reasons for closing the claims without payment were valid.

***10** The claim files reviewed contained documentation that supported the Company's reasons for closing the claims without payment. All reasons for denial or closing the files without payment were deemed valid. Claims were denied on an average of 14 calendar days for the 3-year period. The review of closed without payment claims disclosed no apparent violations of the provisions of [NCGS 58-63-15](#).

Subrogated Claims

Fifty subrogated claims were randomly selected and received for review from a population of 548. The claim files were reviewed to determine if the insured's deductible was properly reimbursed by the Company when subrogation was successful.

The insureds deductible was not reimbursed in a timely manner for 1 claim (2.0 percent error ratio). This matter could result in an apparent violation of the provisions of [NCGS 58-63-15\(11\)](#) if the occurrence is of such frequency as to be considered a general business practice.

The remaining reimbursements were deemed to be correct and were issued on an average of 1 calendar day from the date the Company collected the monies.

Total Loss Settlement Claims

Fifty total loss settlement claims were randomly selected and received for review from a population of 3,908. The claim files were reviewed to determine if the settlements were equitable and timely.

The Company primarily used CCC Information Services, Inc. in addition to independent adjusters to establish the actual cash value of totaled vehicles. All settlements were deemed equitable.

Claims were not investigated in a timely manner for 1 claim (2.0 percent error ratio). Claims were not appraised in a timely manner for 1 claim (2.0 percent error ratio). This matter could result in an apparent violation of the provisions of [NCGS 58-63-15\(11\)](#) if the occurrence is of such frequency as to be considered a general business practice.

The Company settled all remaining claims in a timely manner. The payments were issued on a 3-year average of 29 calendar days. No apparent violations of the provisions of [11 NCAC 4.0418](#) or [4.0421](#) were noted during the review.

[Litigated Claims](#)

The entire population of 37 litigated claims was selected and received for review. The claim files were reviewed to determine if the Company had engaged in any unfair claims practices. Claims were not investigated in a timely manner for 1 claim (2.7 percent error ratio). This matter could result in an apparent violation of the provisions of [NCGS 58-63-15\(11\)](#) if the occurrence is of such frequency as to be considered a general business practice.

[SUMMARY](#)

The Market Conduct examination revealed the following:

[1. Policyholder Treatment](#)

a. The Company was deemed to be in apparent violation of the provisions of [11 NCAC 19.0103](#) as 2.0 percent of the consumer complaints were not listed on the Company's complaint register.

***11** b. The Company was deemed to be in apparent violation of the provisions of [11 NCAC 1.0602](#) as the responses to 18.0 percent of the Departmental inquiries reviewed were in excess of the 7 calendar day requirement of this rule.

c. The Company was deemed to be in apparent violation of the provisions of [11 NCAC 4.0123](#) as the responses to 6.0 percent of the Departmental inquiries reviewed did not include its National Association of Insurance Commissioners code.

[2. Marketing](#)

a. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-3-150](#) and [11 NCAC 10.1201\(c\)](#) as the private passenger automobile application being used was not the application that was filed with and approved by the Commissioner.

b. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-3-150](#) and [11 NCAC 10.0602](#) as the private passenger automobile consent to rate form being used was not the form that was filed with and approved by the Commissioner.

c. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-3-150](#) and [58-36-85\(c\)](#) as the Notice of Termination had not been filed with and approved by the Commissioner.

d. The Company was reminded of the provisions of [11 NCAC 19.0102\(a\)](#) and [19.0106\(a\)\(3\)\(h\)](#) as confirmation of termination was not provided to the Department for 2.0 percent of terminated producers reviewed.

e. The Company was reminded of the provisions of [NCGS 58-33-56\(d\)](#) as notification of termination was not sent to 4.0 percent of the terminated producers reviewed.

3. Underwriting and Rating

a. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-33-40](#) as 3.0 percent of the private passenger automobile applications reviewed were accepted from a producer who was not appointed.

b. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-36-30\(a\)](#) and [58-37-35\(l\)](#) as 28.0 percent of the active private passenger automobile policies reviewed were rated incorrectly.

c. The Company was deemed to be in apparent violation of the provisions of [11 NCAC 10.0602\(a\)](#) as 10.0 percent of the active private passenger automobile files reviewed did not contain a copy of the signed consent to rate form for physical damage coverages.

d. The Company was reminded of the provisions of [11 NCAC 19.0102\(a\)\(b\)](#), [19.0104](#), and [19.0106\(a\)\(4\)\(h\)](#) as 4.0 percent of the active private passenger automobile files reviewed did not contain proper file documentation.

4. Terminations

a. The Company was reminded of the provisions of [NCGS 58-36-30\(a\)](#) and Rule 10 of the North Carolina Personal Automobile Manual as 3.0 percent of the cancelled private passenger automobile policies reviewed were cancelled using an incorrect cancellation method.

b. The Company was reminded of the provisions of [NCGS 58-35-85\(1\)\(2\)](#) as 8.0 percent of the cancelled private passenger automobile files reviewed contained no documentation verifying that the premium finance company notified the insured not less than 10 days prior to cancellation of coverage or sent the insurer a request for cancellation.

***12** c. The Company was reminded of the provisions of [NCGS 58-36-85\(b\)\(3\)](#) as 6.0 percent of the cancelled private passenger automobile files reviewed contained no documentation verifying that the insured requested cancellation of the policy.

d. The Company was reminded of the provisions of [NCGS 20-309](#) as the North Carolina Notice of Termination form was not submitted to the North Carolina Division of Motor Vehicles when liability coverages were cancelled for 7.0 percent of the cancelled private passenger automobile policies reviewed.

e. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-36-85\(c\)](#) as the notice of nonrenewal was not issued at least 60 days prior to the termination date for 10.7 percent of the nonrenewed private passenger automobile policies reviewed.

f. The Company was reminded of the provisions of [NCGS 58-36-85\(b\)](#) as the notice of nonrenewal was not issued in writing for 3.6 percent of the nonrenewed private passenger automobile policies reviewed.

TABLE OF STATUTES AND RULES

Statute/Rule	Title
NCGS 58-2-131	Examinations to be made; authority, scope, scheduling, and conduct of examinations.

NCGS 58-2-164	Rate evasion fraud; prevention programs.
NCGS 58-3-150	Forms to be approved by the Commissioner.
NCGS 58-7-15	Kinds of insurance authorized.
NCGS 58-33-40	Appointment of agents.
NCGS 58-33-56	Notification to Commissioner of termination.
NCGS 58-35-85	Procedure for cancellation of insurance contract upon default; return of unearned premiums; collection of cash surrender value.
NCGS 58-36-30	Deviations.
NCGS 58-36-85	Termination of a nonfleet private passenger motor vehicle insurance policy.
NCGS 58-37-1	Definitions.
NCGS 58-37-35	The Facility; functions; administration.
NCGS 58-39-25	Notice of insurance information practices.
NCGS 58-39-26	Federal privacy disclosure notice requirements.
NCGS 58-39-27	Privacy notice and disclosure requirement exceptions.
NCGS 58-63-15	Unfair methods of competition and unfair or deceptive acts or practices defined.
NCGS 20-309	Motor vehicle registration.
11 NCAC 1.0602	Insurance Companies' Response to Departmental Inquiries.
11 NCAC 4.0123	Use of Specific Company Name in Responses.
11 NCAC 4.0418	Total Losses on Motor Vehicles.
11 NCAC 4.0421	Handling of Loss and Claim Payments.

11 NCAC 10.0602	Consent to Rate Procedures: Rate Bureau Coverages.
11 NCAC 10.1201	General Requirements.
11 NCAC 19.0102	Maintenance of Records.
11 NCAC 19.0103	Complaint Records.
11 NCAC 19.0104	Policy Records.
11 NCAC 19.0106	Records Required for Examination.

CONCLUSION

*13 An examination has been conducted on the market conduct affairs of Allstate Property and Casualty Insurance Company for the period January 1, 2007 through December 31, 2009 with analyses of certain operations of the Company being conducted through July 25, 2011. The Company's response to this report, if any, is available upon request.

This examination was conducted in accordance with the North Carolina Department of Insurance and the National Association of Insurance Commissioners Market Regulation Handbook procedures, including analyses of Company operations in the areas of policyholder treatment, marketing, underwriting and rating, terminations and claims practices.

In addition to the undersigned, James P. McQuillan, CPCU and Dana Eaves, North Carolina Market Conduct Examiners, participated in this examination.

Respectfully submitted,
/s/ Norma M. Rafter
Norma M. Rafter, CPCU
Examiner-In-Charge
Market Regulation Division
State of North Carolina

I have reviewed this examination report and it meets the provisions for such reports prescribed by this Division and the North Carolina Department of Insurance.

/s/ Tracy M. Biehn
Tracy M. Biehn, LPCS, MBA
Deputy Commissioner
Market Regulation Division
State of North Carolina

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2011 WL 4387728

State of North Carolina

*1 Report on Market Conduct Examination of the

Titan Indemnity Company

San Antonio, Texas

April 14, 2011

MARKET CONDUCT REPORTS

North Carolina Department of Insurance



Image 1 within document in PDF format.

Report

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Raleigh, North Carolina

April 14, 2011

Honorable Mike Geeslin

Commissioner of Insurance

Texas Department of Insurance

333 Guadalupe Street

Austin, Texas 78701

Honorable Mary Taylor

Director of Insurance

Ohio Department of Insurance

50 West Town Street, Suite 300

Columbus, OH 43215

Honorable Wayne Goodwin

Commissioner of Insurance

Department of Insurance

State of North Carolina

Dobbs Building

430 N. Salisbury Street

Raleigh, North Carolina 27603

Honorable Commissioners:

Pursuant to your instructions and in accordance with the provisions of [North Carolina General Statute \(NCGS\) 58-2-131](#), a general examination has been made of the market conduct activities of

TITAN INDEMNITY COMPANY (NAIC #13242)

***2** NAIC Exam Tracking System Exam Number: NC170-M86

San Antonio, Texas

hereinafter generally referred to as the Company, at the North Carolina Department of Insurance (Department) office located at 11 S. Boylan Avenue, Raleigh, North Carolina. A report thereon is respectfully submitted.

FOREWORD

This examination reflects the North Carolina insurance activities of Titan Indemnity Company. The examination is, in general, a report by exception. Therefore, much of the material reviewed will not be contained in this written report, as reference to any practices, procedures, or files that manifested no improprieties were omitted.

SCOPE OF EXAMINATION

This examination commenced on August 16, 2010 and covered the period of January 1, 2007 through December 31, 2009 with analyses of certain operations of the Company being conducted through April 14, 2011. All comments made in this report reflect conditions observed during the period of the examination.

The examination was arranged and conducted by the Department. It was made in accordance with Market Regulation standards established by the Department and procedures established by the National Association of Insurance Commissioners (NAIC) and accordingly included tests of policyholder treatment, marketing, underwriting practices, terminations and claims practices.

It is the Department's practice to cite companies in apparent violation of a statute or rule when the results of a sample show errors/noncompliance at or above the following levels: 0 percent for consumer complaints, sales and advertising, producers who were not appointed and/or licensed and the use of forms and rates/rules that were neither filed with nor approved by the Department; 7 percent for claims; and 10 percent for all other areas reviewed. When errors are detected in a sample, but the error rate is below the applicable threshold for citing an apparent violation, the Department issues a reminder to the company.

EXECUTIVE SUMMARY

This market conduct examination revealed concerns with Company procedures and practices in the following areas:

Consumer Complaints - complaints not listed on the company's complaint register, response time to Departmental inquiries, Company mailing address not included on response, Department not notified of change in contact information.

Appointment and Termination of Producers - failure to perform background checks on appointed producers, termination of appointment letter not provided to the producer in accordance with the statute.

Underwriting Practices - Private passenger automobile: applications accepted from a producer who was not appointed, deviations and coverage incorrectly stated on the declarations page, rating errors.

Terminations - Private passenger automobile cancellations: proper notification not given.

Specific violations related to each area of concern are noted in the appropriate section of this report. All North Carolina General Statutes and rules of the North Carolina Administrative Code cited in this report may be viewed on the North Carolina Department of Insurance Web site www.ncdoi.com by clicking "NCDOI DIVISIONS" then "Legislative Services".

***3** This examination identified various non-compliant practices, some of which may extend to other jurisdictions. The Company is directed to take immediate corrective action to demonstrate its ability and intention to conduct business in North Carolina according to its insurance laws and regulations. When applicable, corrective action for other jurisdictions should be addressed.

All unacceptable or non-compliant practices may not have been discovered or noted in this report. Failure to identify or criticize improper or non-compliant business practices in North Carolina or in other jurisdictions does not constitute acceptance of such practices. Examination report findings that do not reference specific insurance laws, regulations, or bulletins are presented to improve the Company's practices and ensure consumer protection.

COMPANY OVERVIEW

History and Profile

Titan Indemnity Company was incorporated on January 18, 1984 in the State of Texas. The company changed its name from Technology Insurance Company to Titan Indemnity Company in 1986. Titan Indemnity Company is one of seven insurance companies owned by THI Holdings (Delaware), Inc., a Delaware holding company. On August 1, 2003, Nationwide Mutual Insurance Company acquired 100% of the outstanding capital shares of THI Holdings (Delaware), Inc., and the seven THI insurance companies became affiliates of Nationwide Insurance.

Company Operations and Management

The Company is a writer of non-standard private passenger automobile insurance in North Carolina. The Company is licensed in the District of Columbia and all states with the exception of Rhode Island.

Direct written premium for the Company's 2009 countrywide property and casualty operations was \$167,737,173. North Carolina's production for the same period was \$14,951,318. Premiums written in North Carolina between 2007 and 2009 increased approximately 713.7 percent. The charts below outline the Company's mix of business for selected lines in 2009 and loss ratios in North Carolina for the examination period.

Line of Business	Written Premium	Percentage
Private Passenger Automobile Liability	\$9,328,677	62.4
Private Passenger Automobile Physical Damage	\$5,622,641	37.6
Total	\$14,951,318	100.0

Year	Written Premium	Earned Premium	Incurred Losses ^{a1}	Loss Ratio
2007	\$ 1,837,524	\$ 931,913	\$ 753,646	80.0
2008	\$ 8,061,433	\$ 6,188,288	\$ 5,211,305	84.2
2009	\$14,951,318	\$14,836,431	\$12,354,322	83.3

a1 **Does not include IBNRs**

Certificates of Authority

The Certificates of Authority issued to the Company were reviewed for the period under examination. These certificates were reviewed to determine compliance with the provisions of [NCGS 58-7-15](#). The Company's writings in North Carolina were deemed to be in compliance with the authority granted.

Disaster Recovery Procedures

*4 The Company has developed a comprehensive business continuity program to increase its chances of preventing disasters, as well as providing continuing operations following natural or man-made disasters. The plans address individual business functions, applications and systems architectures throughout the organization. These plans are reviewed, updated and exercised on a regular basis. Should an event occur that hinders the Company's ability to conduct normal business operations, the plan encompasses multiple business recovery strategies that allow resumption of critical business operations within a reasonable period of time. The plan includes the relocation of work and employees to other business locations or to remotely secured locations. Data processing systems, critical files and data, backed and stored at alternate data centers are utilized to enable the resumption of business operations. Business functions and system applications have pre-assigned recovery windows to ensure resources are appropriately allocated. In addition, the Company utilizes external vendors to deliver a high level of service to their customers. Should an event occur that hinders the ability to conduct vendor transactions, the Company will appropriately re-direct those vital operations elsewhere in order to maintain continued service to customers.

Rate Evasion Procedures

The Company has established procedures to address nonfleet private passenger automobile insurance rate evasion fraud by identifying any ineligible risk as defined in [NCGS 58-37-1\(4a\)](#) and verifying residency of the policyholder who owns a motor vehicle registered or principally garaged in North Carolina. The Company was found to be in compliance with the provisions of [NCGS 58-2-164](#).

POLICYHOLDER TREATMENT

Consumer Complaints

The Company's complaint handling procedures were reviewed to determine compliance with applicable North Carolina statutes and rules.

The Company's complaint register was reconciled with a listing furnished by the Consumer Services Division of the Department. The Company was deemed to be in apparent violation of the provisions of Title 11 of the North Carolina Administrative Code, (NCAC), Chapter 19, Section 0103 as 3 complaints (15.8 percent error ratio) were not listed on the Company's complaint register.

All complaints from the Department's listing of 19 were selected and received for review. The distribution of complaints requiring a response to the Department is shown in the chart below.

Type of Complaint	Total
Claims	11
Underwriting	4
Administrative	4
Total	19

The Company's response to each complaint was deemed to be appropriate to the circumstances. Fourteen complaints were responded to in excess of seven calendar days; however, extensions were requested and granted for 9 of the complaints. Of the 9 extensions granted, 3 responses were received after the extension date. The Company was deemed to be in apparent violation

of the provisions of [11 NCAC 1.0602](#) as 8 complaints reviewed (42.1 percent error ratio) were responded to in excess of the 7 calendar day requirement of this rule or the extension date.

*5 The Company was deemed to be in apparent violation of the provisions of [11 NCAC 4.0123](#) as 1 response to a Departmental inquiry (5.3 percent error ratio) did not include the Company's mailing address. The Company was deemed to be in apparent violation of the provisions of [11 NCAC 4.0124](#) as it failed to notify the Department of a change in contact information.

The average service time to respond to a Departmental complaint was 18 calendar days. A chart of the Company's response time follows:

Service Days	Number of Files	Percentage of Total
1 - 7	5	26.3
8 - 14	6	31.6
15 - 21	2	10.5
22 - 30	4	21.0
31 - 60	1	5.3
Over 60	1	5.3
Total	19	100.0

Privacy of Financial and Health Information

The Company provided privacy of financial and health information documentation for the examiners' review. The Company exhibited policies and procedures in place so that nonpublic personal financial or health information is not disclosed unless the customer or consumer has authorized the disclosure. The Company was found to be compliant with the provisions of [NCGS 58-39-25](#), [58-39-26](#), and [58-39-27](#).

MARKETING

Policy Forms and Filings

Policy forms and filings for the Company were reviewed to determine compliance with appropriate North Carolina statutes and rules. Filings for the private passenger automobile line of business were made by the North Carolina Rate Bureau on behalf of the Company. Deviations for this line of business were made to the Department by the Company.

Sales and Advertising

Sales and advertising practices of the Company were reviewed to determine compliance with the provisions of [NCGS 58-63-15](#).

All advertising materials referencing the Company or using the logo must be approved by the Sales Manager and Regional Sales Director. The Company notifies producers of new products and changes in insurance statutes and rules via email and blast fax in the form of a memo/flyer. Product Management maintains a copy of Company communications regarding new products and regulations. The examiners reviewed advertisements, bulletins and brochures that are provided to producers for promotional

use. The Company also maintains an internet site: [http:// www.nationwide.com/](http://www.nationwide.com/). The website provides background information relative to its operations, as well as products and services offered.

No unfair or deceptive trade practices were noted in this segment of the examination.

Producer Licensing

The Company's procedures for appointment and termination of its producers were reviewed to determine compliance with the appropriate North Carolina statutes and rules. Fifty appointed and 50 terminated producer files were randomly selected and received for review from populations of 2,338 and 870, respectively.

*6 All appointment forms reviewed were submitted to the Department in accordance with the timetables stipulated under the provisions of [NCGS 58-33-40](#). The Company was deemed to be in apparent violation of the provisions of [11 NCAC 6A.0412\(2\)](#) as background checks were not performed on 21 appointed producers reviewed (42.0 percent error ratio).

The Company was reminded of the provisions of [11 NCAC 19.0102\(a\)](#) and [19.0106\(a\)\(3\)\(h\)](#) as confirmation of termination was not provided for 1 producer reviewed (2.0 percent error ratio). The remaining 49 terminated appointment forms were submitted to the Department in accordance with the timetables stipulated under the provisions of [NCGS 58-33-56\(b\)](#).

The Company was deemed to be in apparent violation of the provisions of [NCGS 58-33-56\(d\)](#) as notification of termination to the producer was not provided in accordance with the statute for 5 terminated producers reviewed (10.0 percent error ratio).

- The letter was not sent to 3 producers.
- The letter was not mailed to the last known address for 1 producer.
- The letter was sent in excess of the 15 day requirement for 1 producer.

Agency Management

The Company has 2,999 active producers appointed in North Carolina. The marketing efforts are driven at both the corporate and regional levels. Corporate marketing is handled out of the home office in Columbus, Ohio and regional marketing is handled out of the regional office in Raleigh, North Carolina.

Regional sales managers are primarily responsible for the agency force. The sales managers are split out by distribution channel. Eighteen sales managers are assigned to the North Carolina exclusive agency force and 1 sales manager is assigned to the North Carolina independent agency force. Reviews are normally conducted annually.

Regional sales managers, working in conjunction with the corporate licensing division, are responsible for appointment, terminations and licensing.

UNDERWRITING PRACTICES

Overview

The Company's marketing philosophy in North Carolina focuses on the private passenger automobile line of business. The Company's private passenger automobile policies were reviewed for adherence to underwriting guidelines, file documentation

and premium determination. Additionally, the policies were examined to determine compliance with the appropriate North Carolina statutes and rules, policy provisions and the applicable policy manual rules.

Private Passenger Automobile

The Company provided a listing of 9,036 active private passenger automobile policies issued during the period under examination. One hundred policies were randomly selected and received for review.

The Company's private passenger automobile policies were written on a 6 or 12 month basis. Liability coverages were written utilizing manual and deviated rates. Physical damage coverages were written on a consent to rate basis. Risk placement was determined by the Company's underwriting guidelines and the underwriter. No discrepancies were noted in the Company's use of its underwriting guidelines.

*7 The Company was deemed to be in apparent violation of the provisions of [NCGS 58-33-40\(h\)](#) as 4 applications reviewed (4.0 percent error ratio) were accepted from a producer who was not appointed. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-63-15\(1\)](#) as the declarations page for 52 policies reviewed (52.0 percent error ratio) incorrectly stated policy terms.

- 37 declarations pages incorrectly stated the policy received a deviation when it was not applied.

• 15 declarations pages incorrectly stated Rental Reimbursement coverage was in effect, in lieu of Coverage for Rented Vehicles.

The Company was deemed to be in apparent violation of the provisions of [NCGS 58-36-30\(a\)](#), [58-37-35\(l\)](#), and Rules 3 and 5 of the North Carolina Personal Automobile Manual as 18 policies reviewed (18.0 percent error ratio) were rated incorrectly. The rating errors consisted of the following:

- Deviation incorrectly applied to Uninsured/Underinsured Motorist (UM/UIM) coverage on 8 policies.
- Minimum aggregate deviation was not adjusted to 35% of North Carolina Rate Bureau premium on 4 policies.
- Incorrect Safe Driver Incentive Plan points applied on 3 policies.
- Incorrect territory was used to rate 2 policies.
- Incorrect UM/UIM base premium applied on 1 policy.

The rating errors resulted in 14 premium undercharges and 3 premium overcharges to the insureds. Refunds for the overcharges, covering multiple terms, were issued by the Company in the amount of \$613.70. The remaining 83 premiums charged were deemed correct.

TERMINATIONS

Overview

The Company's termination procedures for its private passenger automobile policies were reviewed to determine compliance with the appropriate North Carolina statutes and rules, policy provisions and the applicable policy manual rules. Special attention was placed on the validity and reason for termination, timeliness in issuance of the termination notice, policy refund (where

applicable) and documentation of the policy file. A total of 17,563 policies were terminated during the period under examination. The examiners randomly selected 105 terminations for review.

Private Passenger Automobile Cancellations

One hundred cancelled private passenger automobile policies were randomly selected and received for review from a population of 17,558.

The reason for cancellation was deemed valid for all policies reviewed. The review revealed the following reasons for cancellation:

Reason for Cancellation	Number of Policies	Percentage
Nonpayment of premium	87	87.0
Insured's request	10	10.0
Underwriting reasons	2	2.0
No longer eligible	1	1.0
Total	100	100.0

The Company was not required to issue cancellation notices for 10 of the cancellations reviewed as these policies were cancelled at the request of the insured. Cancellation notices for the remaining 90 policies stated the specific reason for cancellation.

***8** The Company was deemed to be in apparent violation of the provisions of [NCGS 58-36-85\(c\)](#) as 27 cancellation notices for nonpayment of premium (27.0 percent error ratio) were not issued at least 15 days prior to the cancellation of the policy.

The Company was reminded of the provisions of [NCGS 58-37-50](#) as 1 insured (1.0 percent error ratio) was not offered liability coverage ceded to the North Carolina Reinsurance Facility when the policy did not meet the Company's voluntary guidelines.

The Company was reminded of the provisions of [NCGS 58-36-30\(a\)](#) and Rule 10 of the North Carolina Personal Automobile Manual as the return premium was calculated incorrectly on 2 policies reviewed (2.0 percent error ratio). The errors resulted in overstatement of refund to the insured.

As a result of the incorrect return premium calculation, the Department requested the Company to conduct a self audit in this area. The Company identified an additional 695 policies affected (excluding those that were reviewed by the examiners as noted above) that resulted in refunds being made in the amount of \$7,547.65. All refund checks were mailed to the insureds on January 19, 2011.

The final area of this review encompassed documentation of the policy file. All policy files reviewed contained sufficient documentation to support the action taken by the Company. The Company sent the North Carolina Notice of Termination Form (FS-4) to the North Carolina Division of Motor Vehicles (DMV) when liability coverages were cancelled. The Company was deemed to be in compliance with the provisions of [NCGS 20-309](#).

Private Passenger Automobile Nonrenewals

The entire population of 5 nonrenewed private passenger automobile policies was selected and received for review.

The reason for nonrenewal was deemed valid for all policies reviewed. The review revealed the following reason for nonrenewal:

Reason for Nonrenewal	Number of Policies	Percentage
No longer eligible	5	100.0
Total	5	100.0

The nonrenewal notices for the policies reviewed stated the specific reason for nonrenewal. All insureds and loss payees were given proper and timely notification of nonrenewal.

The final area of this review encompassed documentation of the policy file. All policy files reviewed contained sufficient documentation to support the action taken by the Company. The Company sent the FS-4 to the DMV when liability coverages were cancelled. The Company was deemed to be in compliance with the provisions of [NCGS 20-309](#).

Declinations/Rejections

Coverage was bound at point of sale so there were no declinations or rejections.

CLAIMS PRACTICES

Overview

The Company's claims practices were reviewed to determine compliance with the appropriate North Carolina statutes and rules and policy provisions. The review encompassed paid, automobile medical payment, first and third party bodily injury, closed without payment, subrogated, total loss settlement and litigated claims.

*9 Claims service in North Carolina is under the direction of the Field Claims Director and is provided from the branch offices located in Raleigh, North Carolina and in Columbia, South Carolina. The staff is comprised of the claims director, 6 claims managers, 36 claims associates and 3 clerical personnel. Claims service is provided by company adjusters only. The Company agency force does not adjust any claims and does not have claims draft authority. The Company's salvage log is maintained by the Total Loss Unit based in Des Moines, Iowa.

Three hundred fifty-two claims were randomly selected for review from a population of 9,482.

Paid Claims

The examiners randomly selected and received 100 of the 4,658 first party automobile physical damage and third party property damage claims paid during the period under examination. The claim files were reviewed for timeliness of payment, supporting documentation and accuracy of payment.

The following types of claims were reviewed and the average payment time is noted in calendar days:

Type of Claim	Payment Time
Automobile physical damage	12.0
Third party property damage	11.0

All payments issued by the Company were deemed to be accurate. Deductibles were correctly applied and depreciation taken was reasonable.

All claim files reviewed contained documentation to support the Company's payments. The documentation consisted of appraisals, estimates, repair bills, or inventory listings.

Automobile Medical Payment Claims

Fifty automobile medical payment claims were randomly selected and received for review from a population of 594. The claim files were reviewed to determine if the Company had engaged in any unfair claims practices. The review of automobile medical payment claims disclosed no apparent violations of the provisions of [NCGS 58-63-15\(11\)](#).

First and Third Party Bodily Injury Claims

Fifty first and third party bodily injury claims were randomly selected and received for review from a population of 1,102. The claim files were reviewed to determine whether the Company had engaged in any unfair claims practices. The review of first and third party bodily injury claims disclosed no apparent violations of the provisions of [NCGS 58-63-15\(11\)](#).

Closed Without Payment Claims

Fifty closed without payment claims were randomly selected and received for review from a population of 2,317. The claim files were reviewed to determine if the Company's reasons for closing the claims without payment were valid.

The claim files reviewed contained documentation that supported the Company's reasons for closing the claims without payment. All reasons for denial or closing the files without payment were deemed valid. Claims were denied on an average of 6 calendar days for the 3-year period. The review of closed without payment claims disclosed no apparent violations of the provisions of [NCGS 58-63-15\(11\)](#).

Subrogated Claims

***10** Fifty subrogated claims were randomly selected and received for review from a population of 113. The claim files were reviewed to determine if the insured's deductible was properly reimbursed by the Company when subrogation was successful.

One claim (2.0 percent error ratio) was not paid in a timely manner. This matter could result in an apparent violation of the provisions of [NCGS 58-63-15\(11\)](#) if the occurrence is of such frequency as to be considered a general business practice.

All reimbursements were deemed to be correct and were issued on a 3-year average of 1 calendar day from the date the Company collected the monies.

Total Loss Settlement Claims

Fifty total loss settlement claims were randomly selected and received for review from a population of 696. The claim files were reviewed to determine if the settlements were equitable and timely.

Two claims (4.0 percent error ratio) were not appraised in a timely manner. This matter could result in an apparent violation of the provisions of [NCGS 58-63-15\(11\)](#) if the occurrence is of such frequency as to be considered a general business practice.

The Company primarily used CCC Information Services, Inc. in addition to on-site independent adjusters to establish the actual cash value of totaled vehicles. All settlements were deemed equitable. The Company settled all claims in a timely manner. The payments were issued on a 3-year average of 26 calendar days. No apparent violations of the provisions of [NCGS 58-63-15\(11\)\(h\)](#), [11 NCAC 4.0418](#), or [4.0421](#) were noted during this review.

Litigated Claims

The entire population of 2 litigated claims was selected and received for review. The claim files were reviewed to determine if the Company had engaged in any unfair claims practices. The review of litigated claims disclosed no apparent violation of the provisions of [NCGS 58-63-15](#).

SUMMARY

The Market Conduct examination revealed the following:

1. Policyholder Treatment

a. The Company was deemed to be in apparent violation of the provisions of [11 NCAC 19.0103](#) as 15.8 percent of the consumer complaints reviewed were not listed on the Company's complaint register.

b. The Company was deemed to be in apparent violation of the provisions of [11 NCAC 1.0602](#) as the responses to 42.1 percent of the Departmental inquiries reviewed were in excess of the 7 calendar day requirement of this rule.

c. The Company was deemed to be in apparent violation of the provisions of [11 NCAC 4.0123](#) as the responses to 5.3 percent of the Departmental inquiries reviewed did not include its mailing address.

d. The Company was deemed to be in apparent violation of the provisions of [11 NCAC 4.0124](#) as it failed to notify the Department of a change in contact information.

2. Marketing

a. The Company was deemed to be in apparent violation of the provisions of [11 NCAC 6A.0412\(2\)](#) as background checks were not performed on 42.0 percent of the appointed producers reviewed.

***11** b. The Company was reminded of the provisions of [11 NCAC 19.0102\(a\)](#) and [19.0106\(a\)\(3\)\(h\)](#) as confirmation of termination was not provided for 2.0 percent of the terminated producers reviewed.

c. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-33-56\(d\)](#) as notification of termination was not provided in accordance with the statute for 10.0 percent of the terminated producers reviewed.

3. Underwriting and Rating

a. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-33-40\(h\)](#) as 4.0 percent of the private passenger automobile applications reviewed were accepted from a producer who was not appointed.

b. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-63-15\(1\)](#) as the declarations page of 52.0 percent of the active private passenger automobile policies reviewed incorrectly stated policy terms.

c. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-36-30\(a\)](#), [58-37-35\(l\)](#), and Rules 3 and 5 of the North Carolina Personal Automobile Manual as 18.0 percent of the active private passenger automobile policies reviewed were rated incorrectly.

4. Terminations

a. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-36-85\(c\)](#) as 27.0 percent of the private passenger automobile cancellation notices for nonpayment of premium were not issued at least 15 days prior to the cancellation of the policy.

b. The Company was reminded of the provisions of [NCGS 58-37-50](#) as 1.0 percent of the insureds were not offered liability coverage ceded to the North Carolina Reinsurance Facility when the private passenger automobile policy did not meet the Company's voluntary guidelines.

c. The Company was reminded of the provisions of [NCGS 58-36-30\(a\)](#) and Rule 10 of the North Carolina Personal Automobile Manual as the return premium was calculated incorrectly on 2.0 percent of the cancelled private passenger automobile policies reviewed.

TABLE OF STATUTES AND RULES

Statute/Rule	Title
NCGS 58-2-131	Examinations to be made; authority, scope, scheduling, and conduct of examinations.
NCGS 58-2-164	Rate evasion fraud; prevention programs.
NCGS 58-7-15	Kinds of insurance authorized.
NCGS 58-33-40	Appointment of agents.
NCGS 58-33-56	Notification to Commissioner of termination.
NCGS 58-36-30	Deviations.

NCGS 58-36-85	Termination of a nonfleet private passenger motor vehicle insurance policy.
NCGS 58-37-1	Definitions.
NCGS 58-37-35	The Facility; functions; administration.
NCGS 58-37-50	Termination of insurance.
NCGS 58-39-25	Notice of insurance information practices.
NCGS 58-39-26	Federal privacy disclosure notice requirements.
NCGS 58-39-27	Privacy notice and disclosure requirement exceptions.
NCGS 58-63-15	Unfair methods of competition and unfair or deceptive acts or practices defined.
NCGS 20-309	Motor vehicle registration.
11 NCAC 1.0602	Insurance Companies' Response to Departmental Inquiries.
11 NCAC 4.0123	Use of Specific Company Name in Responses.
11 NCAC 4.0124	Insurance Company Contact Persons.
11 NCAC 4.0418	Total Losses on Motor Vehicles.
11 NCAC 4.0421	Handling of Loss and Claim Payments.
11 NCAC 6A.0412	Appointment of Agent: Responsibility of Company.
11 NCAC 19.0102	Maintenance of Records.
11 NCAC 19.0103	Complaint Records.
11 NCAC 19.0106	Records Required for Examination.

CONCLUSION

*12 An examination has been conducted on the market conduct affairs of Titan Indemnity Company for the period January 1, 2007 through December 31, 2009 with analyses of certain operations of the Company being conducted through April 14, 2011. The Company's response to this report, if any, is available upon request.

This examination was conducted in accordance with the North Carolina Department of Insurance and the National Association of Insurance Commissioners Market Regulation Handbook procedures, including analyses of Company operations in the areas of policyholder treatment, marketing, underwriting practices, terminations and claims practices.

In addition to the undersigned, James P. McQuillan, CPCU, AIT and Letha Lombardi, North Carolina Market Conduct Examiners, participated in this examination.

Respectfully submitted,
/s/ Norma M. Rafter
Norma M. Rafter, CPCU
Examiner-In-Charge
Market Regulation Division
State of North Carolina

I have reviewed this examination report and it meets the provisions for such reports prescribed by this Division and the North Carolina Department of Insurance.

/s/ Tracy M. Biehn
Tracy M. Biehn, LPCS, MBA
Deputy Commissioner
Market Regulation Division
State of North Carolina

End of Document

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2011 WL 4387736

State of North Carolina

*1 Report on Market Conduct Examination of the

Victoria Fire & Casualty Company

Mayfield Heights, Ohio

April 14, 2011

MARKET CONDUCT REPORTS

North Carolina Department of Insurance



Image 1 within document in PDF format.

Report

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Raleigh, North Carolina

April 14, 2011

Honorable Mary Taylor

Director of Insurance

Ohio Department of Insurance

50 West Town Street, Suite 300

Columbus, OH 43215

Honorable Wayne Goodwin

Commissioner of Insurance

Department of Insurance

State of North Carolina

Dobbs Building

430 N. Salisbury Street

Raleigh, North Carolina 27603

Honorable Commissioners:

Pursuant to your instructions and in accordance with the provisions of [North Carolina General Statute \(NCGS\) 58-2-131](#), a general examination has been made of the market conduct activities of

VICTORIA FIRE & CASUALTY COMPANY (NAIC #42889)

NAIC Exam Tracking System Exam Number: NC170-M80

Mayfield Heights, Ohio

hereinafter generally referred to as the Company, at the North Carolina Department of Insurance (Department) office located at 11 S. Boylan Avenue, Raleigh, North Carolina. A report thereon is respectfully submitted.

FOREWORD

*2 This examination reflects the North Carolina insurance activities of Victoria Fire & Casualty Company. The examination is, in general, a report by exception. Therefore, much of the material reviewed will not be contained in this written report, as reference to any practices, procedures, or files that manifested no improprieties were omitted.

SCOPE OF EXAMINATION

This examination commenced on August 16, 2010 and covered the period of April 1, 2008 through December 31, 2009 with analyses of certain operations of the Company being conducted through April 14, 2011. All comments made in this report reflect conditions observed during the period of the examination.

The examination was arranged and conducted by the Department. It was made in accordance with Market Regulation standards established by the Department and procedures established by the National Association of Insurance Commissioners (NAIC) and accordingly included tests of policyholder treatment, marketing, underwriting practices, terminations and claims practices.

It is the Department's practice to cite companies in apparent violation of a statute or rule when the results of a sample show errors/noncompliance at or above the following levels: 0 percent for consumer complaints, sales and advertising, producers who were not appointed and/or licensed, and the use of forms and rates/rules that were neither filed with nor approved by the Department; 7 percent for claims; and 10 percent for all other areas reviewed. When errors are detected in a sample, but the error rate is below the applicable threshold for citing an apparent violation, the Department issues a reminder to the company.

EXECUTIVE SUMMARY

This market conduct examination revealed concerns with Company procedures and practices in the following areas:

Consumer Complaints - complaints not listed on the company's complaint register and response time to Departmental inquiries.

Appointment and Termination of Producers - failure to perform background checks on appointed producers and termination of appointment letter not provided to the producer in accordance with the statute.

Underwriting Practices - Private passenger automobile: applications accepted from a producer who was not appointed, deviations and coverage incorrectly stated on the declarations page, rating errors.

Terminations - Private passenger automobile cancellations: proper notification not given.

Specific violations related to each area of concern are noted in the appropriate section of this report. All North Carolina General Statutes and rules of the North Carolina Administrative Code cited in this report may be viewed on the North Carolina Department of Insurance Web site www.ncdoi.com by clicking "NCDOI DIVISIONS" then "Legislative Services".

This examination identified various non-compliant practices, some of which may extend to other jurisdictions. The Company is directed to take immediate corrective action to demonstrate its ability and intention to conduct business in North Carolina according to its insurance laws and regulations. When applicable, corrective action for other jurisdictions should be addressed.

***3** All unacceptable or non-compliant practices may not have been discovered or noted in this report. Failure to identify or criticize improper or non-compliant business practices in North Carolina or in other jurisdictions does not constitute acceptance of such practices. Examination report findings that do not reference specific insurance laws, regulations, or bulletins are presented to improve the Company's practices and ensure consumer protection.

COMPANY OVERVIEW

History and Profile

Victoria Fire and Casualty Company was incorporated under the laws of Ohio on July 11, 1983 as a stock company and commenced business on August 9, 1983. Nationwide Mutual Insurance Company, the ultimate parent, acquired THI Holdings Delaware, Inc., which owns Victoria Fire and Casualty Company on August 1, 2003.

Company Operations and Management

The Company is a writer of non-standard private passenger automobile coverages. The Company is currently licensed in 40 states and the District of Columbia.

Direct written premium for the Company's 2009 countrywide property and casualty operations was \$335,692,084. North Carolina's production for the same period was \$13,485,343. Premiums written in North Carolina between 2008 and 2009 increased approximately 81.0 percent. The charts below outline the Company's mix of business for selected lines in 2009 and loss ratios in North Carolina for the examination period.

Line of Business	Written Premium	Percentage
Private Passenger Automobile Liability	\$8,198,920	60.8
Private Passenger Automobile Physical Damage	5,286,423	39.2
Total	\$13,485,343	100.0

Year	Written Premium	Earned Premium	Incurred Losses ^{a1}	Loss Ratio
2008	\$7,448,511	\$4,263,978	\$3,826,439	89.7
2009	\$13,485,343	\$14,099,647	\$13,148,068	93.3

a1 **Does not include IBNRs**

Certificates of Authority

The Certificates of Authority issued to the Company were reviewed for the period under examination. These certificates were reviewed to determine compliance with the provisions of [NCGS 58-7-15](#). The Company's writings in North Carolina were deemed to be in compliance with the authority granted.

Disaster Recovery Procedures

The Company has developed a comprehensive business continuity program to increase its chances of preventing disasters, as well as providing continuing operations following natural or man-made disasters. The plans address individual business functions, applications and systems architectures throughout the organization. These plans are reviewed, updated and exercised on a regular basis. Should an event occur that hinders the Company's ability to conduct normal business operations, the plan encompasses multiple business recovery strategies that allow resumption of critical business operations within a reasonable period of time. The plan includes the relocation of work and employees to other business locations or to remotely secured locations. Data processing systems, critical files and data, backed and stored at alternate data centers are utilized to enable the resumption of business operations. Business functions and system applications have pre-assigned recovery windows to ensure resources are appropriately allocated. In addition, the Company utilizes external vendors to deliver a high level of service to their customers. Should an event occur that hinders the ability to conduct vendor transactions, the Company will appropriately re-direct those vital operations elsewhere in order to maintain continued service to customers.

Rate Evasion Procedures

*4 The Company has established procedures to address nonfleet private passenger automobile insurance rate evasion fraud by identifying any ineligible risk as defined in [NCGS 58-37-1\(4a\)](#) and verifying residency of the policyholder who owns a motor vehicle registered or principally garaged in North Carolina. The Company was found to be in compliance with the provisions of [NCGS 58-2-164](#).

POLICYHOLDER TREATMENT

Consumer Complaints

The Company's complaint handling procedures were reviewed to determine compliance with applicable North Carolina statutes and rules.

The Company's complaint register was reconciled with a listing furnished by the Consumer Services Division of the Department. The Company was deemed to be in apparent violation of the provisions of Title 11 of the North Carolina Administrative Code, (NCAC), Chapter 19, Section 0103 as 2 complaints (10.5 percent error ratio) were not listed on the Company's complaint register.

All complaints from the Department's listing of 19 were selected and received for review. The distribution of complaints requiring a response to the Department is shown in the chart below.

Type of Complaint	Total
Claims	15
Underwriting	3
Administrative	1
Total	19

The Company's response to each complaint was deemed to be appropriate to the circumstances. Nine complaints were responded to in excess of seven calendar days; however, extensions were requested and granted for 5 of the complaints. The Company was deemed to be in apparent violation of the provisions of [11 NCAC 1.0602](#) as 4 complaints reviewed (21.1 percent error ratio) were responded to in excess of the 7 calendar day requirement of this rule or the extension date.

The average service time to respond to a Departmental complaint was 11 calendar days. A chart of the Company's response time follows:

Service Days	Number of Files	Percentage of Total
1 - 7	10	52.6
8 - 14	4	21.1
15 - 21	3	15.8

22 - 30	2	10.5
Total	19	100.0

Privacy of Financial and Health Information

The Company provided privacy of financial and health information documentation for the examiners' review. The Company exhibited policies and procedures in place so that nonpublic personal financial or health information is not disclosed unless the customer or consumer has authorized the disclosure. The Company was found to be compliant with the provisions of NCGS 58-39-25, 58-39-26, and 58-39-27.

MARKETING

Policy Forms and Filings

Policy forms and filings for the Company were reviewed to determine compliance with appropriate North Carolina statutes and rules. Filings for the private passenger automobile line of business were made by the North Carolina Rate Bureau on behalf of the Company. Deviations for this line of business were made to the Department by the Company.

Sales and Advertising

*5 Sales and advertising practices of the Company were reviewed to determine compliance with the provisions of NCGS 58-63-15.

All advertising materials referencing the Company or using the logo must be approved by the Sales Manager and Regional Sales Director. The Company notifies producers of new products and changes in insurance statutes and rules via email and blast fax in the form of a memo/flyer. Product Management maintains a copy of Company communications regarding new products and regulations. The examiners reviewed advertisements, bulletins and brochures that are provided to producers for promotional use. The Company also maintains an internet site: [http:// www.nationwide.com/](http://www.nationwide.com/). The website provides background information relative to its operations, as well as products and services offered.

No unfair or deceptive trade practices were noted in this segment of the examination.

Producer Licensing

The Company's procedures for appointment and termination of its producers were reviewed to determine compliance with the appropriate North Carolina statutes and rules. Fifty appointed and 50 terminated producer files were randomly selected and received for review from populations of 551 and 85, respectively.

All appointment forms reviewed were submitted to the Department in accordance with the timetables stipulated under the provisions of NCGS 58-33-40. The Company was deemed to be in apparent violation of the provisions of 11 NCAC 6A.0412(2) as background checks were not performed on any of the 50 appointed producers reviewed (100 percent error ratio).

The Company was reminded of the provisions of 11 NCAC 19.0102(a) and 19.0106(a)(3)(h) as confirmation of termination was not provided for 3 producers reviewed (6.0 percent error ratio). The remaining 47 terminated appointment forms were submitted to the Department in accordance with the timetables stipulated under the provisions of NCGS 58-33-56(b).

The Company was deemed to be in apparent violation of the provisions of [NCGS 58-33-56\(d\)](#) as notification of termination to the producer was not provided in accordance with the statute for 6 terminated producers reviewed (12.0 percent error ratio).

- The letter was not sent to 3 producers.
- The letter was sent in excess of the 15 day requirement for 3 producers.

Agency Management

The Company has 928 active producers appointed in North Carolina. The marketing efforts are driven at both the corporate and regional levels. Corporate marketing is handled out of the home office in Columbus, Ohio and regional marketing is handled out of the regional office in Raleigh, North Carolina.

Regional sales managers are primarily responsible for the agency force. The sales managers are split out by distribution channel. Eighteen sales managers are assigned to the North Carolina exclusive agency force and 1 sales manager is assigned to the North Carolina independent agency force. Reviews are normally conducted annually.

*6 Regional sales managers, working in conjunction with the corporate licensing division, are responsible for appointment, terminations and licensing.

UNDERWRITING PRACTICES

Overview

The Company's marketing philosophy in North Carolina focuses on the private passenger automobile line of business. The Company's private passenger automobile policies were reviewed for adherence to underwriting guidelines, file documentation and premium determination. Additionally, the policies were examined to determine compliance with the appropriate North Carolina statutes and rules, policy provisions and the applicable policy manual rules.

Private Passenger Automobile

The Company provided a listing of 6,791 active private passenger automobile policies issued during the period under examination. One hundred policies were randomly selected and received for review.

The Company's private passenger automobile policies were written on a 6 or 12 month basis. Liability coverages were written utilizing manual and deviated rates. Physical damage coverages were written on a consent to rate basis. Risk placement was determined by the Company's underwriting guidelines and the underwriter. No discrepancies were noted in the Company's use of its underwriting guidelines.

The Company was deemed to be in apparent violation of the provisions of [NCGS 58-33-40](#) as 19 applications reviewed (19.0 percent error ratio) were accepted from a producer who was not appointed. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-63-15\(1\)](#) as the declarations page for 86 policies reviewed (86.0 percent error ratio) incorrectly stated policy terms.

- 64 declarations pages incorrectly stated the policy received a deviation when it was not applied.
- 22 declarations pages incorrectly stated Rental Reimbursement coverage was in effect, in lieu of Coverage for Rented Vehicles.

The Company was deemed to be in apparent violation of the provisions of [NCGS 58-36-30\(a\)](#), [58-37-35\(l\)](#), and Rules 4 and 5 of the North Carolina Personal Automobile Manual as 17 policies reviewed (17.0 percent error ratio) were rated incorrectly. The rating errors consisted of the following:

- Deviation incorrectly applied to Uninsured/Underinsured Motorist coverage on 7 policies.
- Incorrect Safe Driver Incentive Plan points applied on 6 policies.
- Minimum aggregate deviation was not adjusted to 35% of North Carolina Rate Bureau premium on 2 policies.
- Accident free discount was applied when an insured had an unverifiable driving history on 1 policy.
- Operator was incorrectly classified on 1 policy.

The rating errors resulted in 12 premium undercharges and 5 premium overcharges to the insureds. Refunds for the overcharges, covering multiple terms, were issued by the Company in the amount of \$1,427.32. The remaining 82 premiums charged were deemed correct.

*7 The Company was reminded of the provisions of [11 NCAC 10.0602\(a\)](#) as 1 file reviewed (1.0 percent error ratio) did not contain a signed consent to rate form.

TERMINATIONS

Overview

The Company's termination procedures for its private passenger automobile policies were reviewed to determine compliance with the appropriate North Carolina statutes and rules, policy provisions and the applicable policy manual rules. Special attention was placed on the validity and reason for termination, timeliness in issuance of the termination notice, policy refund (where applicable) and documentation of the policy file. A total of 14,683 policies were terminated during the period under examination. The examiners randomly selected 135 terminations for review.

Private Passenger Automobile Cancellations

One hundred cancelled private passenger automobile policies were randomly selected and received for review from a population of 14,648.

The reason for cancellation was deemed valid for all policies reviewed. The review revealed the following reasons for cancellation:

Reason for Cancellation	Number of Policies	Percentage
Nonpayment of premium	89	89.0
Insured's request	7	7.0
Underwriting reasons	2	2.0
Finance company request	1	1.0

No longer eligible	1	1.0
Total	100	100.0

The Company was not required to issue cancellation notices for 7 of the cancellations reviewed as these policies were cancelled at the request of the insured. Cancellation notices for the remaining 93 policies stated the specific reason for cancellation.

The Company was deemed to be in apparent violation of the provisions of [NCGS 58-36-85\(c\)](#) as 23 cancellation notices for nonpayment of premium (23.0 percent error ratio) were not issued at least 15 days prior to the cancellation of the policy.

The Company was reminded of the provisions of [NCGS 58-36-30\(a\)](#) and Rule 10 of the North Carolina Rate Bureau Manual as the return premium was calculated incorrectly on 1 policy reviewed (1.0 percent error ratio). The error resulted in understatement of refund to the insured. At the request of the examiners, a refund in the amount of \$18.39 was issued by the Company for the understatement of refund. The remaining premium refunds were deemed correct. The Company issued the refunds in a timely manner.

As a result of the incorrect return premium calculation, the Department requested the Company to conduct a self audit in this area. The Company identified an additional 602 policies affected (excluding those that were reviewed by the examiners as noted above) that resulted in refunds being made in the amount of \$6,503.90. All refund checks were mailed to the insureds on January 19, 2011.

The final area of this review encompassed documentation of the policy file. All policy files reviewed contained sufficient documentation to support the action taken by the Company. The Company sent the North Carolina Notice of Termination Form (FS-4) to the North Carolina Division of Motor Vehicles (DMV) when liability coverages were cancelled. The Company was deemed to be in compliance with the provisions of [NCGS 20-309](#).

Private Passenger Automobile Nonrenewals

***8** The entire population of 35 nonrenewed private passenger automobile policies was selected and received for review.

The reason for nonrenewal was deemed valid for all policies reviewed. The review revealed the following reasons for nonrenewal:

Reason for Nonrenewal	Number of Policies	Percentage
Producer no longer appointed	25	71.4
No longer eligible	10	28.6
Total	35	100.0

The nonrenewal notices for the policies reviewed stated the specific reason for nonrenewal. All insureds and loss payees were given proper and timely notification of nonrenewal.

The final area of this review encompassed documentation of the policy file. All policy files reviewed contained sufficient documentation to support the action taken by the Company. The Company was reminded of the provisions of [NCGS 20-309.2](#) as the FS-4 was not submitted to the DMV when liability coverages were cancelled for 2 policies reviewed (5.7 percent error ratio).

Declinations/Rejections

Coverage was bound at point of sale so there were no declinations or rejections.

CLAIMS PRACTICES

Overview

The Company's claims practices were reviewed to determine compliance with the appropriate North Carolina statutes and rules and policy provisions. The review encompassed paid, automobile medical payment, first and third party bodily injury, closed without payment, subrogated and total loss settlement claims.

Claims service in North Carolina is under the direction of the Field Claims Director and is provided from the branch offices located in Raleigh, North Carolina and in Columbia, South Carolina. The staff is comprised of the claims director, 6 claims managers, 36 claims associates and 3 clerical personnel. Claims service is provided by company adjusters only. The Company agency force does not adjust any claims and does not have claims draft authority. The Company's salvage log is maintained by the Total Loss Unit based in Des Moines, Iowa. Three hundred fifty claims were randomly selected for review from a population of 9,011.

Paid Claims

The examiners randomly selected and received 100 of the 4,410 first party automobile physical damage and third party property damage claims paid during the period under examination. The claim files were reviewed for timeliness of payment, supporting documentation and accuracy of payment.

The following types of claims were reviewed and the average payment time is noted in calendar days:

Type of Claim	Payment Time
Automobile physical damage	25.0
Third party property damage	16.0

A policy deductible was not applied to 1 claim reviewed (2.0 percent error ratio). This resulted in an overpayment of \$250.00 to the policyholder. This matter could result in an apparent violation of the provisions of [NCGS 58-63-15\(11\)](#) if the occurrence is of such frequency as to be considered a general business practice. All other deductibles were correctly applied and depreciation taken was reasonable.

***9** All claim files reviewed contained documentation to support the Company's payments. The documentation consisted of appraisals, estimates, repair bills, or inventory listings.

Two claims (4.0 percent error ratio) were not appraised in a timely manner. This matter could result in an apparent violation of the provisions of [NCGS 58-63-15\(11\)](#) if the occurrence is of such frequency as to be considered a general business practice.

Automobile Medical Payment Claims

Fifty automobile medical payment claims were randomly selected and received for review from a population of 306. The claim files were reviewed to determine if the Company had engaged in any unfair claims practices. The review of automobile medical payment claims disclosed no apparent violations of the provisions of [NCGS 58-63-15\(11\)](#).

First and Third Party Bodily Injury Claims

Fifty first and third party bodily injury claims were randomly selected and received for review from a population of 1,099. The claim files were reviewed to determine whether the Company had engaged in any unfair claims practices. The review of first and third party bodily injury claims disclosed no apparent violations of the provisions of [NCGS 58-63-15\(11\)](#).

Closed Without Payment Claims

Fifty closed without payment claims were randomly selected and received for review from a population of 2,320. The claim files were reviewed to determine if the Company's reasons for closing the claims without payment were valid.

The claim files reviewed contained documentation that supported the Company's reasons for closing the claims without payment. All reasons for denial or closing the files without payment were deemed valid. Claims were denied on an average of 8 calendar days for the 3-year period. The review of closed without payment claims disclosed no apparent violations of the provisions of [NCGS 58-63-15\(11\)](#).

Subrogated Claims

Fifty subrogated claims were randomly selected and received for review from a population of 103. The claim files were reviewed to determine if the insured's deductible was properly reimbursed by the Company when subrogation was successful.

All reimbursements were deemed to be correct and were issued on a 3-year average of 1 calendar day from the date the Company collected the monies.

Total Loss Settlement Claims

Fifty total loss settlement claims were randomly selected and received for review from a population of 773. The claim files were reviewed to determine if the settlements were equitable and timely.

The Company primarily used CCC Information Services, Inc. in addition to on-site independent adjusters to establish the actual cash value of totaled vehicles. All settlements were deemed equitable. Claims were not paid or appraised in a timely manner for 2 claims (4.0 percent error ratio). This matter could result in an apparent violation of the provisions of [NCGS 58-63-15\(11\)](#) if the occurrence is of such frequency as to be considered a general business practice. The payments were issued on a 3-year average of 26 calendar days. No apparent violations of the provisions of [NCGS 58-63-15\(11\)\(h\)](#), [11 NCAC 4.0418](#), or [4.0421](#) were noted during this review.

Litigated Claims

***10** The Company reported that they did not have any litigated claims during the examination period under review.

SUMMARY

The Market Conduct examination revealed the following:

1. Policyholder Treatment

- a. The Company was deemed to be in apparent violation of the provisions of 11 NCAC 19.0103 as 10.5 percent of the consumer complaints reviewed were not listed on the Company's complaint register.
- b. The Company was deemed to be in apparent violation of the provisions of 11 NCAC 1.0602 as the responses to 21.1 percent of the Departmental inquiries reviewed were in excess of the 7 calendar day requirement of this rule.

2. Marketing

- a. The Company was deemed to be in apparent violation of the provisions of 11 NCAC 6A.0412(2) as background checks were not performed on 100 percent of the appointed producers reviewed.
- b. The Company was reminded of the provisions of 11 NCAC 19.0102(a) and 19.0106(a)(3)(h) as confirmation of termination was not provided for 6.0 percent of the terminated producers reviewed.
- c. The Company was deemed to be in apparent violation of the provisions of NCGS 58-33-56(d) as notification of termination was not provided in accordance with the statute for 12.0 percent of the terminated producers reviewed.

3. Underwriting and Rating

- a. The Company was deemed to be in apparent violation of the provisions of NCGS 58-33-40(h) as 19.0 percent of the private passenger automobile applications reviewed were accepted from a producer who was not appointed.
- b. The Company was deemed to be in apparent violation of the provisions of NCGS 58-63-15(1) as the declarations page of 86.0 percent of the active private passenger automobile policies reviewed incorrectly stated policy terms.
- c. The Company was deemed to be in apparent violation of the provisions of NCGS 58-36-30(a), 58-37-35(l), and Rules 4 and 5 of the North Carolina Personal Automobile Manual as 17.0 percent of the active private passenger automobile policies reviewed were rated incorrectly.
- d. The Company was reminded of the provisions of 11 NCAC 10.0602(a) as a signed consent to rate form was not contained in 1.0 percent of the active private passenger automobile files reviewed.

4. Terminations

- a. The Company was deemed to be in apparent violation of the provisions of NCGS 58-36-85(c) as 23.0 percent of the private passenger automobile cancellation notices for nonpayment of premium were not issued at least 15 days prior to the cancellation of the policy.
- b. The Company was reminded of the provisions of NCGS 58-36-30(a) and Rule 10 of the North Carolina Personal Automobile Manual as the return premium was calculated incorrectly on 1.0 percent of the cancelled private passenger automobile policies reviewed.

c. The Company was reminded of the provisions of [NCGS 20-309.2](#) as the North Carolina Notice of Termination Form was not submitted to the North Carolina Division of Motor Vehicles for 5.7 percent of the nonrenewed private passenger automobile policies reviewed.

TABLE OF STATUTES AND RULES

Statute/Rule	Title
NCGS 58-2-131	Examinations to be made; authority, scope, scheduling, and conduct of examinations.
NCGS 58-2-164	Rate evasion fraud; prevention programs.
NCGS 58-7-15	Kinds of insurance authorized.
NCGS 58-33-40	Appointment of agents.
NCGS 58-33-56	Notification to Commissioner of termination.
NCGS 58-36-30	Deviations.
NCGS 58-36-85	Termination of a nonfleet private passenger motor vehicle insurance policy.
NCGS 58-37-1	Definitions.
NCGS 58-37-35	The Facility; functions; administration.
NCGS 58-39-25	Notice of insurance information practices.
NCGS 58-39-26	Federal privacy disclosure notice requirements.
NCGS 58-39-27	Privacy notice and disclosure requirement exceptions.
NCGS 58-63-15	Unfair methods of competition and unfair or deceptive acts or practices defined.
NCGS 20-309	Motor vehicle registration.
11 NCAC 1.0602	Insurance Companies' Response to Departmental Inquiries.

11 NCAC 4.0418	Total Losses on Motor Vehicles.
11 NCAC 4.0421	Handling of Loss and Claim Payments.
11 NCAC 6A.0412	Appointment of Agent: Responsibility of Company.
11 NCAC 10.0602	Consent to Rate Procedures: Rate Bureau Coverages.
11 NCAC 19.0102	Maintenance of Records.
11 NCAC 19.0103	Complaint Records.
11 NCAC 19.0106	Records Required for Examination.

CONCLUSION

***11** An examination has been conducted on the market conduct affairs of Victoria Fire & Casualty Company for the period April 1, 2008 through December 31, 2009 with analyses of certain operations of the Company being conducted through April 14, 2011. The Company's response to this report, if any, is available upon request.

This examination was conducted in accordance with the North Carolina Department of Insurance and the National Association of Insurance Commissioners Market Regulation Handbook procedures, including analyses of Company operations in the areas of policyholder treatment, marketing, underwriting practices, terminations, and claims practices.

In addition to the undersigned, James P. McQuillan, CPCU, AIT and Letha Lombardi, North Carolina Market Conduct Examiners, participated in this examination.

Respectfully submitted,
/s/ Norma M. Rafter
Norma M. Rafter, CPCU
Examiner-In-Charge
Market Regulation Division
State of North Carolina

I have reviewed this examination report and it meets the provisions for such reports prescribed by this Division and the North Carolina Department of Insurance.

/s/ Tracy M. Biehn
Tracy M. Biehn, LPCS, MBA
Deputy Commissioner
Market Regulation Division
State of North Carolina

2010 WL 2866924

State of North Carolina

*1 Report on Market Conduct Examination of the

Discovery Insurance Company

Kinston, North Carolina

February 19, 2010

MARKET CONDUCT REPORTS

North Carolina Department of Insurance



Image 1 within document in PDF format.

Report

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Raleigh, North Carolina
February 19, 2010
Honorable Wayne Goodwin
Commissioner of Insurance
Department of Insurance
State of North Carolina
Dobbs Building
430 N. Salisbury Street
Raleigh, North Carolina 27603
Honorable Commissioner:

Pursuant to your instructions and in accordance with the provisions of [North Carolina General Statute \(NCGS\) 58-2-131](#), a general examination has been made of the market conduct activities of

DISCOVERY INSURANCE COMPANY (NAIC #22635)

NAIC Exam Tracking System Exam Number: NC170-M60

Kinston, North Carolina

hereinafter generally referred to as the Company, at the North Carolina Department of Insurance (Department) office located at 11 S. Boylan Avenue, Raleigh, North Carolina. A report thereon is respectfully submitted.

FOREWORD

*2 This examination reflects the North Carolina insurance activities of Discovery Insurance Company. The examination is, in general, a report by exception. Therefore, much of the material reviewed will not be contained in this written report, as reference to any practices, procedures, or files that manifested no improprieties were omitted.

SCOPE OF EXAMINATION

This examination commenced on January 4, 2010 and covered the period of January 1, 2006 through December 31, 2008 with analyses of certain operations of the Company being conducted through February 15, 2010. All comments made in this report reflect conditions observed during the period of the examination.

The examination was arranged and conducted by the Department. It was made in accordance with Market Regulation standards established by the Department and procedures established by the National Association of Insurance Commissioners (NAIC) and accordingly included tests of policyholder treatment, marketing, underwriting and rating, terminations, and claims practices.

It is the Department's practice to cite companies in apparent violation of a statute or rule when the results of a sample show errors/noncompliance at or above the following levels: 0 percent for consumer complaints, sales and advertising, producers who were not appointed and/or licensed, and the use of forms and rates/rules that were neither filed with nor approved by the Department; 7 percent for claims; and 10 percent for all other areas reviewed. When errors are detected in a sample, but the error rate is below the applicable threshold for citing an apparent violation, the Department issues a reminder to the company.

EXECUTIVE SUMMARY

This market conduct examination revealed concerns with Company procedures and practices in the following areas:

Consumer Complaints - incomplete complaint log, response time to Departmental inquiries, NAIC company code not included on Company response.

Policy Forms and Filings - use of unfiled policy declarations page for private passenger automobile.

Appointment and Termination of Producers - failure to perform background checks on appointed producers and failure to notify producers of termination.

Underwriting and Rating - applications accepted from a producer who was not appointed and failure to comply with proper consent to rate procedures for private passenger automobile.

Terminations - Private passenger automobile cancellations: failure to issue the North Carolina Notice of Termination form (FS-4) to the Division of Motor Vehicles (DMV). Workers' compensation cancellations: return premium calculated incorrectly. Workers' Compensation nonrenewals: proper notification not given.

Specific violations related to each area of concern are noted in the appropriate section of this report. All North Carolina General Statutes and rules of the North Carolina Administrative Code cited in this report may be viewed on the North Carolina Department of Insurance Web site www.ncdoi.com, by clicking "Helpful Links."

***3** This examination identified various non-compliant practices, some of which may extend to other jurisdictions. The Company is directed to take immediate corrective action to demonstrate its ability and intention to conduct business in North Carolina according to its insurance laws and regulations. When applicable, corrective action for other jurisdictions should be addressed.

All unacceptable or non-compliant practices may not have been discovered or noted in this report. Failure to identify or criticize improper or non-compliant business practices in North Carolina or in other jurisdictions does not constitute acceptance of such practices. Examination report findings that do not reference specific insurance laws, regulations, or bulletins are presented to improve the Company's practices and ensure consumer protection.

COMPANY OVERVIEW

History and Profile

Discovery Insurance Company is a stock company. As of March 2008, the Company was majority owned by Stephen B. Hill. The Company was incorporated on October 20, 1993 under the laws of North Carolina and began business operations effective November 1, 1993. The Company is domiciled in Kinston, North Carolina.

Company Operations and Management

The Company is a writer of non-standard private passenger automobile and workers' compensation coverages. Effective January 2006, the Company discontinued writing unaffiliated workers' compensation business. The Company is currently licensed only in the State of North Carolina.

Direct written premium for the Company's 2008 property and casualty operations was \$25,719,390. Premiums written in North Carolina between 2006 and 2008 decreased approximately 5.0 percent. The charts below outline the Company's mix of business for selected lines in 2008 and loss ratios in North Carolina for the examination period.

Line of Business		Written Premium	Percentage
Private Passenger Automobile		\$20,443,653	79.5
Workers' Compensation		5,275,737	20.5
Total		\$25,719,390	100.0

Year	Written Premium	Earned Premium	Incurred Losses*	Loss Ratio
2006	\$27,067,140	\$24,501,809	\$20,907,424	85.3
2007	\$30,111,080	\$30,047,785	\$28,800,706	95.8
2008	\$25,719,390	\$27,265,942	\$23,697,392	86.9

* Does not include IBNRs

Certificates of Authority

The Certificates of Authority issued to the Company were reviewed for the period under examination. These certificates were reviewed to determine compliance with the provisions of NCGS 58-7-15. The Company's writings in North Carolina were deemed to be in compliance with the authority granted.

Disaster Recovery Procedures

The Company has a detailed business continuation plan established to increase its chances of preventing disasters, as well as providing continuing operations following natural or man-made disasters. Each day key software databases, user files, and all electronically stored files are backed up. On a weekly basis, backed up files are placed inside a fire resistant safe and then placed in a separate physical building from the servers. In the event of a catastrophic loss to the Company's server room, the Company has two sister companies located at separate physical locations in Kinston, North Carolina which can host the Company's personnel, computer systems, and telecommunications systems allowing continued Company operations.

POLICYHOLDER TREATMENT

Consumer Complaints

*4 The Company's complaint handling procedures were reviewed to determine compliance with applicable North Carolina statutes and rules.

The Company was deemed to be in apparent violation of the provisions of Title 11 of the North Carolina Administrative Code, (NCAC), Chapter 19, Section 0103 as 2 complaints (4.0 percent error ratio) were not listed on the Company's complaint register.

The Company's complaint register was reconciled with a listing furnished by the Consumer Services Division of the Department. Fifty complaints from the Department's listing of 81 were randomly selected and received for review. The distribution of complaints requiring a response to the Department is shown in the chart below.

Type of Complaint	Total
Claims	42
Underwriting	8
Total	50

The Company's response to each complaint was deemed to be appropriate to the circumstances. The Company was deemed to be in apparent violation of the provisions of [11 NCAC 1.0602](#) as 1 of the complaints reviewed (2.0 percent error ratio) was responded to in excess of the 7 calendar day requirement of this rule.

The Company was deemed to be in apparent violation of the provisions of [11 NCAC 4.0123](#) as 13 responses to Departmental inquiries (26.0 percent error ratio) did not contain the Company's NAIC company code.

The average service time to respond to a Departmental complaint was 2 calendar days. A chart of the Company's response time follows:

Service Days	Number of Files	Percentage of Total
1 - 7	49	98
15 - 21	1	2
Total	50	100.0

Privacy of Financial and Health Information

The Company provided privacy of financial and health information documentation for the examiners' review. The Company exhibited policies and procedures in place so that nonpublic personal financial or health information is not disclosed unless the customer or consumer has authorized the disclosure. The Company was found to be compliant with the provisions of [NCGS 58-39-25](#), [58-39-26](#), and [58-39-27](#).

MARKETING

Policy Forms and Filings

Policy forms and filings for the Company were reviewed to determine compliance with appropriate North Carolina statutes and rules. Filings for the private passenger automobile line of business were made by the North Carolina Rate Bureau on behalf of the Company. Deviations for this line of business were made to the Department by the Company.

The Company was deemed to be in apparent violation of the provisions of [11 NCAC 10.1201\(c\)](#) as the Private Passenger Automobile Policy Declarations page had not been filed with and approved by the Department.

Sales and Advertising

Sales and advertising practices of the Company were reviewed to determine compliance with the provisions of [NCGS 58-63-15](#).

*5 The Company does not market directly to insureds or prospective insureds. It distributes its products through North Carolina independent agents only. The Company's marketing objective is to partner with professional and compliant North Carolina independent agents who sell profitable non-standard automobile physical damage and ceded liability coverage. The Company does not participate in any media advertisement or telemarketing services of its product.

No unfair or deceptive trade practices were noted in this segment of the examination.

Producer Licensing

The Company's procedures for appointment and termination of its producers were reviewed to determine compliance with the appropriate North Carolina statutes and rules. Fifty appointed and 50 terminated producer files were randomly selected and received for review from populations of 359 and 368, respectively.

All appointment and termination forms reviewed were submitted to the Department in accordance with the timetables stipulated under the provisions of [NCGS 58-33-40](#) and [58-33-56](#). The Company was deemed to be in apparent violation of the provisions of [11 NCAC 6A.0412\(2\)](#) as background checks were not performed on any of the 50 appointed producers reviewed (100 percent error ratio). The Company was deemed to be in apparent violation of the provisions of [NCGS 58-33-56\(d\)](#) as notification of termination was not sent to 46 of the terminated producers reviewed (92.0 percent error ratio).

Agency Management

The Company has 125 active agencies with approximately 1,058 producers appointed in North Carolina as well as 2 full time marketing representatives. The President, located in the home office in Kinston, North Carolina, is responsible for the activities of the agency force. Formal agency reviews are conducted twice annually and include the participation of the following: President, Executive Vice President, Vice President of Auto Operations, Chief Financial Officer, Personal Auto Manager, Assistant Vice President of Auto Claims, and Eastern/Western Marketing Representatives. Agent appointments, terminations and licensing are handled by Eastern and Western Marketing Representatives and Executive Administrative Assistant to the President.

UNDERWRITING AND RATING

Overview

The Company's marketing philosophy in North Carolina focuses on the private passenger automobile line of business. The Company's private passenger automobile policies were reviewed for adherence to underwriting guidelines, file documentation,

and premium determination. Additionally, the policies were examined to determine compliance with the appropriate North Carolina statutes and rules, policy provisions, and the applicable policy manual rules.

Private Passenger Automobile

The Company provided a listing of 18,524 active private passenger automobile policies issued during the period under examination. One hundred policies were randomly selected and received for review.

*6 The Company's private passenger automobile policies were written on a 6 or 12 month basis. Liability coverages were written utilizing manual rates. Physical damage coverages were written on a consent to rate basis. Risk placement was determined by the Company's underwriting guidelines and the underwriter. No discrepancies were noted in the Company's use of its underwriting guidelines.

The Company was deemed to be in apparent violation of the provisions of [NCGS 58-33-40\(h\)](#) as 18 applications reviewed (18.0 percent error ratio) were accepted from a producer who was not appointed. The Company was reminded of the provisions of [NCGS 58-37-35\(l\)](#) and Rules 3 and 5 of the North Carolina Personal Automobile Manual as 6 policies reviewed (6.0 percent error ratio) were rated incorrectly. The rating errors consisted of the following:

- Incorrect rating symbol applied to 4 policies.
- Incorrect Safe Driver Incentive Plan points applied on 1 policy.
- Incorrect territory was used to rate 1 policy.

The rating errors resulted in 3 premium undercharges and 3 premium overcharges to the insureds. At the request of the examiners, refunds in the amount of \$257.12 were issued by the Company for the overcharges.

The Company was deemed to be in apparent violation of the provisions of [11 NCAC 10.0602\(a\)\(2\)](#) as it did not comply with consent to rate procedures on 44 policies reviewed (44.0 percent error ratio) because the standard rate that would be charged for physical damage and/or extended transportation coverage, without application of consent to rate, was not indicated on the application.

The Company was reminded of the provisions of [NCGS 58-2-185](#) as the policy declarations page for 9 policies reviewed (9.0 percent error ratio) incorrectly stated no premium was charged for Uninsured/Underinsured Motorist coverage.

The Company was reminded of the provisions of [11 NCAC 19.0102\(a\)\(b\)](#), [19.0104](#), and [19.0106\(a\)\(4\)\(h\)](#) as 1 file reviewed (1.0 percent error ratio) did not contain a signed consent to rate form.

TERMINATIONS

Overview

The Company's termination procedures were reviewed to determine compliance with the appropriate North Carolina statutes and rules, policy provisions, and the applicable policy manual rules. The review focused on the following lines of business:

1. Private Passenger Automobile
2. Workers' Compensation

Special attention was placed on the validity and reason for termination, timeliness in issuance of the termination notice, policy refund (where applicable), and documentation of the policy file. A total of 30,566 policies were terminated during the period under examination. The examiners randomly selected 109 terminations for review.

Private Passenger Automobile Cancellations

One hundred cancelled private passenger automobile policies were randomly selected and received for review from a population of 30,557.

*7 The reason for cancellation was deemed valid for all policies reviewed. The review revealed the following reasons for cancellation:

Reason for Cancellation	Number of Policies	Percentage
Finance company request	62	62.0
Nonpayment of premium	22	22.0
Insured's request	15	15.0
Underwriting reasons	1	1.0
Total	100	100.0

The Company was not required to issue cancellation notices for 15 of the cancellations reviewed as these policies were cancelled at the request of the insured. Cancellation notices for the remaining 85 policies stated the specific reason for cancellation. All insureds and loss payees were given proper and timely notification of cancellation.

All premium refunds were deemed correct. The Company issued the refunds in a timely manner.

The final area of this review encompassed documentation of the policy file. All policy files reviewed contained sufficient documentation to support the action taken by the Company. The Company was deemed to be in apparent violation of the provisions of [NCGS 20-309\(e\)](#) (repealed effective July 2008) and [NCGS 20-309.2](#) (effective July 2008) as the FS-4 was not submitted to the DMV when liability coverages were cancelled for 12 policies reviewed (12.0 percent error ratio).

Workers' Compensation Cancellations

The entire population of 3 workers' compensation policies cancelled during the period under examination was reviewed.

The reason for cancellation was deemed valid for all policies reviewed. The review revealed the following reasons for cancellation:

Reason for Cancellation	Number of Policies	Percentage
Insured's request	1	33.4
Nonpayment of premium	1	33.3
Underwriting reasons	1	33.3

Total	3	100.0
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The Company was not required to issue a cancellation notice for 1 of the cancellations reviewed as this policy was cancelled at the request of the insured.

The Company was deemed to be in apparent violation of the provisions of [NCGS 58-36-100](#) as the return premium was calculated incorrectly on 1 policy reviewed (33.3 percent error ratio). The error resulted in understatement of refund to the insured. At the request of the examiners, a refund in the amount of \$2,582 was issued by the Company. The remaining premium refunds were deemed correct. The Company issued the refunds in a timely manner.

The final area of this review encompassed documentation of the policy file. All policy files reviewed contained sufficient documentation to support the action taken by the Company.

Private Passenger Automobile Nonrenewals

The Company reported no private passenger automobile policies were nonrenewed during the period under examination.

Workers' Compensation Nonrenewals

*8 The entire population of 6 workers' compensation policies nonrenewed during the period under examination was reviewed.

The reason for nonrenewal was deemed valid for all policies reviewed. The review revealed the following reason for nonrenewal:

Reason for Nonrenewal	Number of Policies	Percentage
Underwriting reasons	6	100.0
Total	6	100.0

The nonrenewal notices for the policies reviewed stated the specific reason for nonrenewal. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-36-110\(b\)](#) as 1 insured (16.7 percent error ratio) was not provided at least 45 days notice of nonrenewal.

The final area of this review encompassed documentation of the policy file. All policy files contained sufficient documentation to support the action taken by the Company.

CLAIMS PRACTICES

Overview

The Company's claims practices were reviewed to determine compliance with the appropriate North Carolina statutes and rules and policy provisions. The review encompassed paid, automobile medical payment, first and third party bodily injury, closed without payment, subrogated, total loss settlement, and litigated claims.

Claims service in North Carolina is under the direction of the Vice President of Auto Operations and is provided from the home office located in Kinston, North Carolina. The staff is comprised of the Assistant Vice President of Claims, 4 company telephone adjusters, and 3 claim assistants. Company adjusters provide the claim service with assistance, at times, from independent adjusters. Independent adjusters have no check or draft authority. The Company agency force does not adjust any claims and does not have claims draft authority. With regard to total losses, a salvage log is maintained by a claim assistant and overseen by the Assistant Vice President of Claims.

Five hundred claims were randomly selected for review from a population of 27,466.

Paid Claims

The examiners randomly selected and received 200 of the 15,982 first party automobile physical damage and third party property damage claims paid during the period under examination. The claim files were reviewed for timeliness of payment, supporting documentation and accuracy of payment.

The following types of claims were reviewed and the average payment time is noted in calendar days:

Type of Claim	Payment Time
Automobile physical damage	14.0
Third party property damage	13.0

All payments issued by the Company were deemed to be accurate. Deductibles were correctly applied and depreciation taken was reasonable.

The Company was reminded of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0105](#), and [19.0106\(a\)\(5\)\(h\)](#) as one file (0.5 percent error ratio) did not contain payment or appraisal information. The remainder of the files reviewed contained documentation to support the Company's payments. The documentation consisted of appraisals, estimates, repair bills, or inventory listings.

*9 Claims were not paid in a timely manner for 8 claims (4.0 percent error ratio) and not appraised in a timely manner for 3 claims (1.5 percent error ratio). This matter could result in an apparent violation of the provisions of [NCGS 58-63-15\(11\)](#) if the occurrence is of such frequency as to be considered a general business practice.

Automobile Medical Payment Claims

Fifty automobile medical payment claims were randomly selected and received for review from a population of 1,453. The claim files were reviewed to determine if the Company had engaged in any unfair claims practices. The review of automobile medical payment claims disclosed no apparent violations of the provisions of [NCGS 58-63-15\(f\)](#).

First and Third Party Bodily Injury Claims

Fifty first and third party bodily injury claims were randomly selected and received for review from a population of 3,016. The claim files were reviewed to determine whether the Company had engaged in any unfair claims practices. The review of first and third party bodily injury claims disclosed no apparent violations of the provisions of [NCGS 58-63-15\(f\)](#).

Closed Without Payment Claims

Fifty closed without payment claims were randomly selected and received for review from a population of 3,258. The claim files were reviewed to determine if the Company's reasons for closing the claims without payment were valid.

The claim files reviewed contained documentation that supported the Company's reasons for closing the claims without payment. All reasons for denial or closing the files without payment were deemed valid. Claims were denied on an average of 14 calendar days for the 3-year period. The review of closed without payment claims disclosed no apparent violations of the provisions of [NCGS 58-63-15\(f\)](#).

Subrogated Claims

Fifty subrogated claims were randomly selected and received for review from a population of 232. The claim files were reviewed to determine if the insured's deductible was properly reimbursed by the Company when subrogation was successful.

All reimbursements were deemed to be correct and were issued on a 3-year average of 1 calendar day from the date the Company collected the monies.

Total Loss Settlement Claims

Fifty total loss settlement claims were randomly selected and received for review from a population of 3,213. The claim files were reviewed to determine if the settlements were equitable and timely.

The Company primarily used CCC Information Services, Inc. in addition to on-site independent adjusters to establish the actual cash value of totaled vehicles. All settlements were deemed equitable. The Company settled all claims in a timely manner. The payments were issued on a 3-year average of 15 calendar days. No apparent violations of the provisions of [NCGS 58-63-15\(11\)\(h\)](#), [11 NCAC 4.0418](#), or [4.0421](#) were noted during this review.

Litigated Claims

***10** Fifty litigated claims were randomly selected and received for review from a population of 312. The claim files were reviewed to determine if the Company had engaged in any unfair claims practices. The review of litigated claims disclosed no apparent violation of the provisions of [NCGS 58-63-15](#).

SUMMARY

The Market Conduct examination revealed the following:

1. Policyholder Treatment

a. The Company was deemed to be in apparent violation of the provisions of [11 NCAC 19.0103](#) as 4.0 percent of the consumer complaints were not listed on the Company's complaint register.

b. The Company was deemed to be in apparent violation of the provisions of [11 NCAC 1.0602](#) as the responses to 2.0 percent of the Departmental inquiries reviewed were in excess of the 7 calendar day requirement of this rule.

c. The Company was deemed to be in apparent violation of the provisions of 11 NCAC 4.0123 as the responses to 26.0 percent of the Departmental inquiries reviewed did not include its National Association of Insurance Commissioners code.

2. Marketing

a. The Company was deemed to be in apparent violation of the provisions of 11 NCAC 10.1201(c) as its private passenger automobile declarations page had not been filed with and approved by the Department.

b. The Company was deemed to be in apparent violation of the provisions of 11 NCAC 6A.0412(2) as background checks were not performed on 100 percent of the producers reviewed.

c. The Company was deemed to be in apparent violation of the provisions of NCGS 58-33-56(d) as notification of termination was not sent to 92.0 percent of the terminated producers reviewed.

3. Underwriting and Rating

a. The Company was deemed to be in apparent violation of the provisions of NCGS 58-33-40(h) as 18.0 percent of the private passenger automobile applications reviewed were accepted from a producer who was not appointed.

b. The Company was reminded of the provisions of NCGS 58-37-35(l) and Rules 3 and 5 of the North Carolina Personal Automobile Manual as 6.0 percent of the active private passenger automobile policies reviewed were rated incorrectly.

c. The Company was deemed to be in apparent violation of the provisions of 11 NCAC 10.0602(a)(2) as proper consent to rate procedures were not followed on 44.0 percent of the active private passenger automobile files reviewed.

d. The Company was reminded of the provisions of NCGS 58-2-185 as 9.0 percent of the active private passenger automobile policies reviewed displayed an incorrect Uninsured/Underinsured Motorist coverage premium on the policy declarations page.

e. The Company was reminded of the provisions of 11 NCAC 19.0102(a)(b), 19.0104, and 19.0106(a)(4)(h) as 1.0 percent of the active private passenger automobile files reviewed did not contain proper file documentation.

4. Terminations

a. The Company was deemed to be in apparent violation of the provisions of NCGS 20-309(e) and 20-309.2 as the North Carolina Notice of Termination Form was not submitted to the North Carolina Division of Motor Vehicles for 12.0 percent of the cancelled private passenger automobile policies reviewed.

*11 b. The Company was deemed to be in apparent violation of the provisions of NCGS 58-36-100 as the return premium was calculated incorrectly on 33.3 percent of the cancelled workers' compensation policies reviewed.

c. The Company was deemed to be in apparent violation of the provisions of NCGS 58-36-110(b) as the nonrenewal notice for 16.7 percent of the nonrenewed workers' compensation policies reviewed was not issued at least 45 days prior to the termination date.

5. Claims

a. The Company was reminded of the provisions of 11 NCAC 19.0102(a), 19.0105, and 19.0106(a)(5)(h) as 0.5 percent of the paid claims reviewed did not contain payment or appraisal information.

TABLE OF STATUTES AND RULES

Statute/Rule	Title
NCGS 58-2-131	Examinations to be made; authority, scope, scheduling, and conduct of examinations.
NCGS 58-2-185	Record of business kept by companies and agents; Commissioner may inspect.
NCGS 58-7-15	Kinds of insurance authorized.
NCGS 58-33-40	Appointment of agents.
NCGS 58-33-56	Notification to Commissioner of termination.
NCGS 58-36-100	Prospective loss costs filings and final rate filings for workers' compensation and employers' liability insurance.
NCGS 58-36-110	Notice of nonrenewal, premium rate increase, or change in workers' compensation insurance coverage required.
NCGS 58-37-35	The Facility; functions; administration.
NCGS 58-39-25	Notice of insurance information practices.
NCGS 58-39-26	Federal privacy disclosure notice requirements.
NCGS 58-39-27	Privacy notice and disclosure requirement exceptions.
NCGS 58-63-15	Unfair methods of competition and unfair or deceptive acts or practices defined.
NCGS 20-309	Motor vehicle registration.
11 NCAC 1.0602	Insurance Companies' Response to Departmental Inquiries.
11 NCAC 4.0123	Use of Specific Company Name in Responses.

11 NCAC 4.0418	Total Losses on Motor Vehicles.
11 NCAC 4.0421	Handling of Loss and Claim Payments.
11 NCAC 6A.0412	Appointment of Agent: Responsibility of Company.
11 NCAC 10.0602	Consent to Rate Procedures: Rate Bureau Coverages.
11 NCAC 10.1201	General Requirements.
11 NCAC 19.0102	Maintenance of Records.
11 NCAC 19.0103	Complaint Records.
11 NCAC 19.0104	Policy Records.
11 NCAC 19.0105	Claim Records.
11 NCAC 19.0106	Records Required for Examination.

CONCLUSION

An examination has been conducted on the market conduct affairs of Discovery Insurance Company for the period January 1, 2006 through December 31, 2008 with analyses of certain operations of the Company being conducted through February 15, 2010. The Company's response to this report, if any, is available upon request.

*12 This examination was conducted in accordance with the North Carolina Department of Insurance and the National Association of Insurance Commissioners Market Regulation Handbook procedures, including analyses of Company operations in the areas of policyholder treatment, marketing, underwriting and rating, terminations, and claims practices.

In addition to the undersigned, James P. McQuillan, CPCU and Letha Lombardi, North Carolina Market Conduct Examiners, participated in this examination.

Respectfully submitted,
/s/ Norma M. Rafter
Norma M. Rafter, CPCU
Examiner-In-Charge
Market Regulation Division
State of North Carolina

I have reviewed this examination report and it meets the provisions for such reports prescribed by this Division and the North Carolina Department of Insurance.

/s/ Tracy M. Biehn
Tracy M. Biehn, LPCS, MBA
Deputy Commissioner
Market Regulation Division
State of North Carolina

End of Document

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2008 WL 5794432

State of North Carolina

*1 Report on Market Conduct Examination of the

Selective Insurance Company of the Southeast

Branchville, New Jersey

February 14, 2008

MARKET CONDUCT REPORTS

North Carolina Department of Insurance



Image 1 within document in PDF format.

Report

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Raleigh, North Carolina

February 14, 2008

Honorable Jim Long

Commissioner of Insurance

Department of Insurance

State of North Carolina

Dobbs Building

*2 430 N. Salisbury Street

Raleigh, North Carolina 27603

Honorable Steven M. Goldman

Commissioner of Insurance

Department of Banking and Insurance

State of New Jersey

20 West State Street

Trenton, New Jersey 08625-0325

Honorable Commissioner:

Pursuant to your instructions and in accordance with the provisions of [North Carolina General Statute \(NCGS\) 58-2-131](#), a general examination has been made of the market conduct activities of

SELECTIVE INSURANCE COMPANY OF THE SOUTHEAST

(NAIC #39926)

NAIC Exam Tracking System Exam Number: NC094-M42

Branchville, New Jersey

hereinafter generally referred to as the Company, at the North Carolina Department of Insurance (Department) office located at 11 S. Boylan Avenue, Raleigh, North Carolina. A report thereon is respectfully submitted.

FOREWORD

This examination reflects the North Carolina insurance activities of Selective Insurance Company of the Southeast. The examination is, in general, a report by exception. Therefore, much of the material reviewed will not be contained in this written report, as reference to any practices, procedures, or files that manifested no improprieties were omitted.

SCOPE OF EXAMINATION

This examination commenced on November 12, 2007 and covered the period of January 1, 2004 through December 31, 2006 with analyses of certain operations of the Company being conducted through February 11, 2008. All comments made in this report reflect conditions observed during the period of the examination.

The examination was arranged and conducted by the Department. It was made in accordance with Market Regulation standards established by the Department and procedures established by the National Association of Insurance Commissioners (NAIC) and accordingly included tests of policyholder treatment, marketing, underwriting and rating, terminations, and claims practices.

It is the Department's practice to cite companies in apparent violation of a statute or rule when the results of a sample show errors/noncompliance at or above the following levels: 0 percent for consumer complaints, sales and advertising, producers who were not appointed and/or licensed, and the use of forms and rates/rules that were neither filed with nor approved by the Department; 7 percent for claims; and 10 percent for all other areas reviewed. When errors are detected in a sample, but the error rate is below the applicable threshold for citing an apparent violation, the Department issues a reminder to the company.

EXECUTIVE SUMMARY

This market conduct examination revealed concerns with Company procedures and practices in the following areas:

Underwriting and Rating - Commercial automobile: applications accepted from non-appointed producers, use of unfiled rates, incomplete file documentation. Workers' compensation: applications accepted from non-appointed producers, incomplete file documentation. Businessowners: applications accepted from non-appointed producers, incomplete file documentation, rating errors. General liability: applications accepted from non-appointed producers. Commercial inland marine: applications accepted from non-appointed and/or non-licensed producers.

***3 Terminations** - Commercial automobile cancellations: failure to provide cancellation notice and/or proof of mailing. Workers' compensation cancellations: failure to provide cancellation notice. Commercial automobile nonrenewals: files not provided for review. Workers' compensation nonrenewals: files not provided for review. Businessowners nonrenewals: file not provided for review. Commercial inland marine nonrenewals: files not provided for review.

Specific violations related to each area of concern are noted in the appropriate section of this report. All North Carolina General Statutes and rules of the North Carolina Administrative Code cited in this report may be viewed on the North Carolina Department of Insurance Web Site www.ncdoi.com, by clicking "Helpful Links."

This examination identified various non-compliant practices, some of which may extend to other jurisdictions. The Company is directed to take immediate corrective action to demonstrate its ability and intention to conduct business in North Carolina according to its insurance laws and regulations. When applicable, corrective action for other jurisdictions should be addressed.

All unacceptable or non-compliant practices may not have been discovered or noted in this report. Failure to identify or criticize improper or non-compliant business practices in North Carolina or in other jurisdictions does not constitute acceptance

of such practices. Examination report findings that do not reference specific insurance laws, regulations, or bulletins are presented to improve the Company's practices and ensure consumer protection.

COMPANY OVERVIEW

History and Profile

Selective Insurance Company of the Southeast is a stock corporation. The Company was incorporated as Southeast Insurance Company (SIC) under the laws of North Carolina on September 26, 1980, to serve as the vehicle for an internal change in ownership of Southeastern Fire Insurance Company (SFIC), which was acquired by Selective Insurance Company of America on July 1, 1980, from Barclays American Corporation, Charlotte, North Carolina. SIC merged with the former SFIC on March 2, 1981 and changed its name to Southeastern Fire Insurance Company. The predecessor company was incorporated under the laws of South Carolina in October 1940 and changed its state of domicile from South Carolina to North Carolina on January 1, 1969. The Company absorbed by merger, on June 30, 1971, a former companion carrier, Twins States Insurance Company, Charlotte, North Carolina. The present name was adopted January 2, 1986.

Company Operations and Management

The Company is a writer of commercial and personal lines insurance coverages, specializing in small and medium sized businesses. The Company is licensed in Alabama, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

*4 Direct written premium for the Company's 2006 countrywide property and casualty operations was \$269,187,691. North Carolina's production for the same period was \$22,151,973. Premiums written in North Carolina between 2004 and 2006 increased approximately 27.0 percent. The charts below outline the Company's mix of business for selected lines in 2006 and loss ratios in North Carolina for the examination period.

Line of Business	Written Premium	Percentage
Workers' Compensation	\$9,912,307	44.8
Federal Flood	7,508,768	33.9
Commercial Automobile	1,812,520	8.2
Commercial Multiple Peril	805,864	3.6
Other Liability	793,681	3.6
Fire and Allied Lines	515,264	2.3
Inland Marine	363,215	1.6
Products Liability	350,010	1.6
Other	90,344	.4
Total	\$22,151,973	100.0

Year	Written Premium	Earned Premium	Incurred Losses ^{a1}	Loss Ratio
2004	\$17,436,365	\$16,025,701	\$ 9,055,592	56.5
2005	\$21,171,162	\$19,680,968	\$ 8,415,071	42.8
2006	\$22,151,973	\$21,307,405	\$11,074,279	52.0

a1 **Does not include IBNRs**

Certificates of Authority

*5 The Certificates of Authority issued to the Company were reviewed for the period under examination. These certificates were reviewed to determine compliance with the provisions of NCGS 58-7-15. The Company's writings in North Carolina were deemed to be in compliance with the authority granted.

Disaster Recovery Procedures

The Company has a detailed business continuation plan established to increase its chances of preventing disasters, as well as providing continuing operations following natural or man-made disasters. In addition, the Company has a comprehensive disaster recovery IT Business Continuity Plan in place that includes procedures to be implemented by designated staff in the event of an emergency that impacts the Company's operations and computer operations facilities. The plan includes a contract with IBM Business Continuity and Recovery Services for IBM to provide equipment, office space, and power generation for the Companies' headquarters location in Branchville, New Jersey. This three year contract includes availability at an IBM recovery center either in Sterling Forest, New York; Gaithersburg, Maryland or Boulder, Colorado. The contract includes all network WAN/LAN, server, mainframe, Storage and Reduced Instruction Set Computer (RISC) hardware that Selective would need to recover all of its systems and connectivity. The Company utilizes their headquarters location in Branchville, New Jersey as a recovery site for all remote locations, including the Southern regional office in Charlotte, North Carolina. Included within the contract are two annual 40 hour tests. In the past, Selective has normally tested in both the first and third quarters of each year.

Additionally, the Company utilizes Tivoli Storage Management with a 3584 Automated Tape Library for nightly back-ups and recovery. Tapes are stored off-site at Vital Records located in Mount Olive, New Jersey and are available within four hours of a request.

POLICYHOLDER TREATMENT

Consumer Complaints

The Company's complaint handling procedures were reviewed to determine compliance with applicable North Carolina statutes and rules. There were no consumer complaints for the period under examination.

Privacy of Financial and Health Information

Privacy of financial and health information applies to transactions involving insurance primarily for personal, family, or household needs rather than business or professional needs, which is what this review consisted of.

MARKETING

Policy Forms and Filings

Policy forms and filings for the Company were reviewed to determine compliance with appropriate North Carolina statutes and rules. Emphasis of the review was placed on the following lines of business:

1. Commercial Automobile
2. Workers' Compensation
3. Businessowners
- *6 4. General Liability
5. Commercial Inland Marine

Filings for the workers' compensation line of business were made by the North Carolina Rate Bureau on behalf of the Company. Filings for the commercial automobile, businessowners, general liability, and commercial inland marine lines of business were made by the Insurance Services Office on behalf of the Company. Deviations for these lines of business were made to the Department by the Company. The Company's commercial inland marine coverages were written utilizing independently filed rates.

Sales and Advertising

Sales and advertising practices of the Company were reviewed to determine compliance with the provisions of [NCGS 58-63-15](#).

The Company does not distribute sales material directly to insureds or prospective insureds, because it distributes its products through the independent agency system. Written procedures for the approval of advertising material are maintained. Advertising requests must be processed through and approved by Corporate Communications Department. Advertising information is maintained in the home office in Branchville, New Jersey.

No unfair or deceptive trade practices were noted in this segment of the examination.

Producer Licensing

The Company's procedures for appointment and termination of its producers were reviewed to determine compliance with the appropriate North Carolina statutes and rules. Fifty appointed and 50 terminated producer files were randomly selected and received for review from populations of 368 and 215, respectively.

All appointment and termination forms reviewed were submitted to the Department in accordance with the timetables stipulated under the provisions of [NCGS 58-33-40](#) and [58-33-56](#).

Agency Management

The Company currently has approximately 1,167 producers appointed in North Carolina. The Assistant Vice-President, Field Operations Manager located in the Regional Office in Charlotte, North Carolina, is responsible for the activities of the agency

force. Formal agency reviews are conducted by regional management and field representatives on an annual basis. The Assistant Vice-President, Field Operations Manager is also responsible for agent appointments, terminations, and licensing.

UNDERWRITING AND RATING

Overview

The Company's marketing philosophy in North Carolina focuses primarily on commercial lines. The Company provided the examiners with listings of the following types of active policies for the period under examination:

1. Commercial Automobile
2. Workers' Compensation
3. Businessowners
4. General Liability
5. Commercial Inland Marine

A random selection of 250 policies was made from a total population of 1,892. Each policy was reviewed for adherence to underwriting guidelines, file documentation, and premium determination. Additionally, the policies were examined to determine compliance with the appropriate North Carolina statutes and rules, policy provisions, and the applicable policy manual rules.

Commercial Automobile

*7 The Company provided a listing of 103 active commercial automobile policies issued during the period under examination. Fifty policies were randomly selected and received for review.

The Company's commercial automobile coverages were written utilizing manual and deviated rates. Policies were written on an annual basis. Risk placement was determined by the Company's underwriting guidelines and the underwriter. No discrepancies were noted in the Company's use of its underwriting guidelines. All policy files contained sufficient documentation to support the Company's classification of the risk.

The Company was deemed to be in apparent violation of the provisions of [NCGS 58-33-40\(h\)](#) as 9 applications reviewed (18.0 percent error ratio) were signed by non-appointed producers. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-36-30\(a\)](#) and [11 NCAC 10.1102\(4\)](#) as the non-fleet private passenger type vehicles on 12 policies reviewed (24.0 percent error ratio) were rated using an unfiled private passenger automobile rate deviation. The Company was deemed to be in apparent violation of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0104](#), and [19.0106\(a\)\(4\)\(h\)](#) as 8 files reviewed (16.0 percent error ratio) did not contain documentation to justify the schedule credit applied. The Company was reminded of the provisions of [NCGS 58-41-50\(f\)](#) as 1 policy reviewed (2.0 percent error ratio) was rated incorrectly. An incorrect territory code and an incorrect secondary factor were used in the rating of the policy. The rating error resulted in a premium undercharge to the insured. The remaining 49 premiums charged were deemed correct.

Workers' Compensation

The Company provided a listing of 946 active workers' compensation policies issued during the period under examination. Fifty policies were randomly selected and received for review.

The Company's workers' compensation coverages were written utilizing manual and deviated rates. Policies were written on an annual basis. Risk placement was determined by the Company's underwriting guidelines and the underwriter. No discrepancies were noted in the Company's use of its underwriting guidelines. All policy files contained sufficient documentation to support the Company's classification of the risk.

The Company was deemed to be in apparent violation of the provisions of [NCGS 58-33-40\(h\)](#) as 3 applications reviewed (6.0 percent error ratio) were signed by non-appointed producers. The Company was deemed to be in apparent violation of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0104](#), and [19.0106\(a\)\(4\)\(h\)](#) as 13 files reviewed (26.0 percent error ratio) did not include documentation to justify the schedule debit/credit applied. All premiums charged were deemed correct.

Businessowners

The Company provided a listing of 651 active businessowners policies issued during the period under examination. Fifty policies were randomly selected and received for review.

***8** The Company's businessowners coverages were written utilizing manual and deviated rates. Policies were written on an annual basis. Risk placement was determined by the Company's underwriting guidelines and the underwriter. No discrepancies were noted in the Company's use of its underwriting guidelines. All policy files contained sufficient documentation to support the Company's classification of the risk.

The Company was deemed to be in apparent violation of the provisions of [NCGS 58-33-40\(h\)](#) as 3 applications reviewed (6.0 percent error ratio) were signed by non-appointed producers. The Company was deemed to be in apparent violation of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0104](#), and [19.0106\(a\)\(4\)\(h\)](#) as 16 files reviewed (32.0 percent error ratio) did not contain documentation to justify the Individual Risk Premium Modification debit/credit applied. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-41-50\(f\)](#) as 13 policies reviewed (26.0 percent error ratio) were rated using an incorrect special increment. The 13 rating errors resulted in premium undercharges to the insureds. The remaining 37 premiums charged were deemed correct.

General Liability

The Company provided a listing of 89 active commercial general liability policies issued during the period under examination. Fifty policies were randomly selected and received for review.

The Company's general liability coverages were written utilizing manual and deviated rates. Policies were written on an annual basis. Risk placement was determined by the Company's underwriting guidelines and the underwriter. No discrepancies were noted in the Company's use of its underwriting guidelines. All policy files contained sufficient documentation to support the Company's classification of the risk.

The Company was deemed to be in apparent violation of the provisions of [NCGS 58-33-40\(h\)](#) as 9 applications reviewed (18.0 percent error ratio) were signed by non-appointed producers. The Company was reminded of the provisions of [NCGS 58-41-50\(f\)](#) as 4 policies reviewed (8.0 percent error ratio) were rated incorrectly. The rating errors consisted of the following:

- Incorrect increased limit factor was used on 1 policy.
- Incorrect minimum premium was charged on 1 policy.
- Incorrect loss cost multiplier was used on 2 policies.

The rating errors resulted in 3 premium undercharges and 1 premium overcharge to the insureds. At the request of the examiners, a refund in the amount of \$292.00 was issued by the Company for the overcharge. The remaining 46 premiums charged were deemed correct.

Commercial Inland Marine

The Company provided a listing of 103 active commercial inland marine policies issued during the period under examination. Fifty policies were randomly selected and received for review.

The Company's commercial inland marine coverages were written utilizing independently filed rates. Policies were written on an annual basis. Coverage may be written on a mono-line basis or as part of a package policy with other commercial exposures. Risk placement was determined by the Company's underwriting guidelines and the underwriter. No discrepancies were noted in the Company's use of its underwriting guidelines. All policy files contained sufficient documentation to support the Company's classification of the risk. All premiums charged were deemed correct.

*9 The Company was deemed to be in apparent violation of the provisions of [NCGS 58-33-40\(h\)](#) as 10 applications reviewed (20.0 percent error ratio) were signed by non-appointed producers. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-33-26\(a\)\(b\)](#) as 1 application (2.0 percent error ratio) was accepted from a non-licensed out of state producer.

TERMINATIONS

Overview

The Company's termination procedures were reviewed to determine compliance with the appropriate North Carolina statutes and rules, policy provisions, and the applicable policy manual rules. The review focused on the following lines of business:

1. Commercial Automobile
2. Workers' Compensation
3. Businessowners
4. General Liability
5. Commercial Inland Marine

Special attention was placed on the validity and reason for termination, timeliness in issuance of the termination notice, policy refund (where applicable), and documentation of the policy file. A total of 808 policies were terminated during the period under examination. The examiners randomly selected 335 terminations for review.

Commercial Automobile Cancellations

Fifty cancelled commercial automobile policies were randomly selected and received for review from a population of 64.

The reason for cancellation was deemed valid for all policies reviewed. The review revealed the following reasons for cancellation:

Reason for Cancellation	Number of Policies	Percentage
Insured's request	22	44.0
Nonpayment of premium	18	36.0
Coverage rewritten	8	16.0
Underwriting reasons	2	4.0
Total	50	100.0

The Company was not required to issue cancellation notices for 30 of the cancellations reviewed as these policies were cancelled at the request of the insured or the coverage was rewritten.

*10 The Company was deemed to be in apparent violation of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(h) as 7 files (14.0 percent error ratio) did not contain proper file documentation. Six files did not contain a copy of the cancellation notice and 1 file did not contain proof of mailing. The Company was reminded of the provisions of NCGS 58-41-15(b) and the policy termination provisions as 2 insureds (4.0 percent error ratio) were not provided at least 15 days notice of cancellation.

The Company was reminded of Rule 11 of the Commercial Automobile Manual as 2 policies (4.0 percent error ratio) were cancelled incorrectly. One policy was cancelled using an incorrect cancellation date, and the return premium for 1 policy was calculated using the short rate method of cancellation in lieu of the pro-rata method. The errors resulted in understatement of refunds to the insureds. At the request of the examiners, the Company issued additional refunds in the amount of \$1,374.00. The remaining premium refunds were deemed correct. The Company issued the refunds in a timely manner.

The final area of this review encompassed documentation of the policy file. All policy files reviewed contained sufficient documentation to support the action taken by the Company. The Company sent the North Carolina Notice of Termination Form (FS-4) to the North Carolina Division of Motor Vehicles (DMV) when liability coverages were cancelled. The Company was deemed to be in compliance with the provisions of NCGS 20-309(e).

Workers' Compensation Cancellations

Fifty cancelled workers' compensation policies were randomly selected for review from a population of 360 policies. The Company was unable to provide 1 of the files requested (2.0 percent error ratio) and was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(h). The review was based on the remaining 49 files.

The reason for cancellation was deemed valid for all policies reviewed. The review revealed the following reasons for cancellation:

Reason for Cancellation	Number of Policies	Percentage
Insured's request	20	40.8
Nonpayment of premium	20	40.8

Coverage rewritten	7	14.3
Underwriting reasons	2	4.1
Total	49	100.0

*11 The Company was not required to issue cancellation notices for 27 of the cancellations reviewed as these policies were cancelled at the request of the insured or the coverage was rewritten.

The Company was deemed to be in apparent violation of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(h) as 5 files (10.2 percent error ratio) did not contain a copy of the cancellation notice to the insured. The Company was reminded of the provisions of NCGS 58-36-105(b) as 3 files (6.1 percent error ratio) did not contain proof of mailing.

The Company was reminded of Rule X of the National Council on Compensation Insurance Manual as 3 policies (6.1 percent error ratio) were cancelled pro-rata rather than short rate when the policy was cancelled at the request of the insured. The errors resulted in overstatement of refunds to the insureds. The remaining premium refunds were deemed correct. The Company issued the refunds in a timely manner.

The final area of this review encompassed documentation of the policy file. All policy files reviewed contained sufficient documentation to support the action taken by the Company.

Businessowners Cancellations

Fifty cancelled businessowners policies were randomly selected and received for review from a population of 116 policies.

The reason for cancellation was deemed valid for all policies reviewed. The review revealed the following reasons for cancellation:

Reason for Cancellation	Number of Policies	Percentage
Nonpayment of premium	27	54.0
Insured's request	14	28.0
Coverage rewritten	7	14.0
Underwriting reasons	2	4.0
Total	50	100.0

The Company was not required to issue cancellation notices for 21 of the cancellations reviewed as these policies were cancelled at the request of the insured or the coverage was rewritten.

The Company was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(h) as 2 files reviewed (4.0 percent error ratio) did not contain proper file documentation. One file did not contain a copy of the policy release and 1 file did not contain a copy of the cancellation notice to the insured.

*12 All premium refunds were deemed correct. The Company issued the refunds in a timely manner.

The final area of this review encompassed documentation of the policy file. All policy files reviewed contained sufficient documentation to support the action taken by the Company.

General Liability Cancellations

Fifty cancelled general liability policies were randomly selected and received for review from a population of 68.

The reason for cancellation was deemed valid for all policies reviewed. The review revealed the following reasons for cancellation:

Reason for Cancellation	Number of Policies	Percentage
Nonpayment of premium	29	58.0
Insured's request	13	26.0
Coverage rewritten	7	14.0
Underwriting reasons	1	2.0
Total	50	100.0

The Company was not required to issue cancellation notices for 20 of the cancellations reviewed as these policies were cancelled at the request of the insured or the coverage was rewritten.

The Company was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(h) as 2 files reviewed (4.0 percent error ratio) did not contain a copy of the cancellation notice to the insured. The Company was reminded of the provisions of NCGS 58-41-15(b) as 1 insured (2.0 percent error ratio) was not provided at least 15 days notice of cancellation for non-payment of policy premium.

The Company was reminded of Rule 11 of the Commercial Lines Manual as the return premium for 2 policies, cancelled at the request of the insured (4.0 percent error ratio), were incorrectly calculated on a pro-rata basis in lieu of .90 of the pro-rata unearned premium. The errors resulted in overstatement of refunds to the insureds. The Company issued the refunds in a timely manner.

The final area of this review encompassed documentation of the policy file. All policy files reviewed contained sufficient documentation to support the action taken by the Company.

Commercial Inland Marine Cancellations

Fifty cancelled inland marine policies were randomly selected and received for review from a population of 66.

*13 The reason for cancellation was deemed valid for all policies reviewed. The review revealed the following reasons for cancellation:

Reason for Cancellation	Number of Policies	Percentage
Nonpayment of premium	23	46.0

Insured's request	22	44.0
Underwriting reasons	3	6.0
Coverage rewritten	2	4.0
Total	50	100.0

The Company was not required to issue cancellation notices for 24 of the cancellations reviewed as these policies were cancelled at the request of the insured or the coverage was rewritten.

The Company was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(h) as 4 files reviewed (8.0 percent error ratio) did not contain a copy of the cancellation notice to the insured.

All premium refunds were deemed correct. The Company issued the refunds in a timely manner.

The final area of this review encompassed documentation of the policy file. All policy files reviewed contained sufficient documentation to support the action taken by the Company.

Commercial Automobile Nonrenewals

One commercial automobile policy was nonrenewed during the period under examination. The Company was unable to provide the 1 file (100 percent error ratio) and was deemed to be in apparent violation of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(h).

Workers' Compensation Nonrenewals

Fifty nonrenewed workers' compensation policies were randomly selected for review from a population of 99. The Company was unable to provide 13 of the files requested (26.0 percent error ratio) and was deemed to be in apparent violation of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(h). The review was based on the remaining 37 files.

The reason for nonrenewal was deemed valid for all policies reviewed. The review revealed the following reasons for nonrenewal:

Reason for Cancellation	Number of Policies	Percentage
Agent no longer represents the Company	19	51.4
Underwriting reasons	18	48.6
Total	37	100.0

*14 The nonrenewal notices for the policies reviewed stated the specific reason for nonrenewal. The Company was reminded of the provisions of NCGS 58-36-110(b) as 3 insureds (8.1 percent error ratio) were not provided at least 45 days notice of nonrenewal.

The final area of this review encompassed documentation of the policy file. All policy files contained sufficient documentation to support the action taken by the Company.

Businessowners Nonrenewals

One businessowners policy was nonrenewed during the period under examination. The Company was unable to provide the 1 file (100 percent error ratio) and was deemed to be in apparent violation of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(h).

General Liability Nonrenewals

The Company reported there were no commercial general liability nonrenewals during the period under examination.

Commercial Inland Marine Nonrenewals

All nonrenewed commercial inland marine policies were selected for review from a population of 33. The Company was unable to provide 8 of the files requested (24.2 percent error ratio) and was deemed to be in apparent violation of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.106(a)(4)(h). The review was based on the remaining 25 files.

The reason for nonrenewal was deemed valid for all policies reviewed. The review revealed the following reasons for nonrenewal:

Reason for Cancellation	Number of Policies	Percentage
Agent no longer represents the Company	16	64.0
Underwriting reasons	9	36.0
Total	25	100.0

The nonrenewal notices for the policies reviewed stated the specific reason for nonrenewal. The Company was reminded of the provisions of NCGS 58-41-20(c) as 1 insured (4.0 percent error ratio) was not provided at least 45 days notice of nonrenewal.

The final area of this review encompassed documentation of the policy file. All policy files reviewed contained sufficient documentation to support the action taken by the Company.

CLAIMS PRACTICES

Overview

***15** The Company's claims practices were reviewed to determine compliance with the appropriate North Carolina statutes and rules and policy provisions. The review encompassed paid, automobile medical payment, first and third party bodily injury, closed without payment, subrogated, total loss settlement, and litigated claims.

Claims service in North Carolina is under the direction of the Southern Regional Claim Manager and is provided from the home office, regional office, claim service center, and field based claim staff. The staff is comprised of 3 claim supervisors and

12 claim handlers. Company adjusters provide the claim service with some assistance, at times, from independent adjusters. Independent adjusters have no check or draft authority. The Company agency force adjusts first party claims and has draft and check authority.

Three hundred sixty-one claims were randomly selected for review from a population of 1,165.

Paid Claims

The examiners randomly selected and received 150 of the 657 first party automobile physical damage, first party property damage, and third party property damage claims paid during the period under examination. The claim files were reviewed for timeliness of payment, supporting documentation and accuracy of payment.

The following types of claims were reviewed and the average payment time is noted in calendar days:

Type of Claim	Payment Time
Automobile physical damage	17.0
First party (excluding automobile physical damage)	15.0
Third party property damage	11.0

All payments issued by the Company were deemed to be accurate. Deductibles were correctly applied and depreciation taken was reasonable.

All claim files reviewed contained documentation to support the Company's payments. The documentation consisted of appraisals, estimates, repair bills, or inventory listings.

The Company took an excessive amount of time (78 days) to pay 1 claim (2.0 percent error ratio). This matter could result in an apparent violation of the provisions of [NCGS 58-63-15\(11\)](#) if the occurrence is of such frequency as to be considered a general business practice.

Automobile Medical Payment Claims

***16** Fifty automobile medical payment claims were randomly selected and received for review from a population of 57. The claim files were reviewed to determine if the Company had engaged in any unfair claims practices. The review of automobile medical payment claims disclosed no apparent violations of the provisions of [NCGS 58-63-15](#).

First and Third Party Bodily Injury Claims

Fifty first and third party bodily injury claims were randomly selected and received for review from a population of 59. The claim files were reviewed to determine whether the Company had engaged in any unfair claims practices. The review of first and third party bodily injury claims disclosed no apparent violations of the provisions of [NCGS 58-63-15](#).

Closed Without Payment Claims

Fifty closed without payment claims were randomly selected and reviewed for review from a population of 308. The claim files were reviewed to determine if the Company's reasons for closing the claims without payment were valid.

The claim files reviewed contained documentation that supported the Company's reasons for closing the claims without payment. All reasons for denial or closing the files without payment were deemed valid. Claims were denied on an average of 5 calendar days for the 3-year period. The review of closed without payment claims disclosed no apparent violations of the provisions of [NCGS 58-63-15](#).

Subrogated Claims

The entire population of 7 subrogated claims for the period under examination was reviewed. The claim files were reviewed to determine if the insured's deductible was properly reimbursed by the Company when subrogation was successful.

All reimbursements were deemed to be correct and were issued on a 3-year average of 1 calendar day from the date the Company collected the monies.

Total Loss Settlement Claims

Fifty total loss settlement claims were randomly selected and reviewed for review from a population of 73. The claim files were reviewed to determine if the settlements were equitable and timely.

The Company primarily used CCC Information Services, Inc. in addition to on-site independent adjusters to establish the actual cash value of totaled vehicles. All settlements were deemed equitable. The Company settled all claims in a timely manner. The payments were issued on a 3-year average of 15 calendar days. No apparent violations of the provisions of [NCGS 58-63-15\(11\)\(h\)](#), [11 NCAC 4.0418](#), or [4.0421](#) were noted during this review.

Litigated Claims

The entire population of 4 litigated claims for the period under examination was reviewed. The claim files were reviewed to determine if the Company had engaged in any unfair claims practices. The review of litigated claims disclosed no apparent violation of the provisions of [NCGS 58-63-15](#).

SUMMARY

*17 The Market Conduct examination revealed the following:

1. Underwriting and Rating

a. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-33-40\(h\)](#) as 18.0 percent of the commercial automobile applications reviewed were signed by non-appointed producers.

b. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-36-30\(a\)](#) and [11 NCAC 10.1102\(4\)](#) as the non-fleet private passenger type vehicles on 24.0 percent of the active commercial automobile policies reviewed were rated using an unfiled private passenger automobile rate deviation.

c. The Company was deemed to be in apparent violation of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(h) as 16.0 percent of the active commercial automobile files reviewed did not contain documentation to justify the schedule credit applied.

d. The Company was reminded of the provisions of NCGS 58-41-50(f) as 2.0 percent of the active commercial automobile policies reviewed were rated incorrectly.

e. The Company was deemed to be in apparent violation of the provisions of NCGS 58-33-40(h) as 6.0 percent of the workers' compensation applications reviewed were signed by non-appointed producers.

f. The Company was deemed to be in apparent violation of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(h) as 26.0 percent of the active workers' compensation files reviewed did not contain documentation to justify the schedule debit/credit applied.

g. The Company was deemed to be in apparent violation of the provisions of NCGS 58-33-40(h) as 6.0 percent of the businessowners applications reviewed were signed by non-appointed producers.

h. The Company was deemed to be in apparent violation of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(h) as 32.0 percent of the active businessowners files reviewed did not contain documentation to justify the Individual Risk Premium Modification debit/credit applied.

i. The Company was deemed to be in apparent violation of the provisions of NCGS 58-41-50(f) as 26.0 percent of the active businessowners policies reviewed were rated using an incorrect special increment.

j. The Company was deemed to be in apparent violation of the provisions of NCGS 58-33-40(h) as 18.0 percent of the general liability applications reviewed were signed by non-appointed producers.

k. The Company was reminded of the provisions of NCGS 58-41-50(f) as 8.0 percent of the active general liability policies reviewed were rated incorrectly.

l. The Company was deemed to be in apparent violation of the provisions of NCGS 58-33-40(h) as 20.0 percent of the commercial inland marine applications reviewed were signed by non-appointed producers.

m. The Company was deemed to be in apparent violation of the provisions of NCGS 58-33-26(a)(b) as 2.0 percent of the commercial inland marine applications reviewed were accepted from a non-licensed out of state producer.

2. Terminations

*18 a. The Company was deemed to be in apparent violation of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(h) as 14.0 percent of the cancelled commercial automobile files reviewed did not contain proper file documentation.

b. The Company was reminded of the provisions of NCGS 58-41-15(b) and the policy termination provisions as the cancellation notice for 4.0 percent of the cancelled commercial automobile policies reviewed was not issued at least 15 days prior to the termination date.

c. The Company was reminded of Rule 11 of the Commercial Automobile Manual as the return premium was calculated incorrectly on 4.0 percent of the cancelled commercial automobile policies reviewed.

- d. The Company was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(h) as 2.0 percent of the cancelled workers' compensation files requested were not provided for review.
- e. The Company was deemed to be in apparent violation of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(h) as 10.2 percent of the cancelled workers' compensation files reviewed did not contain a copy of the cancellation notice to the insured.
- f. The Company was reminded of the provisions of NCGS 58-36-105(b) as 6.1 percent of the cancelled workers' compensation files reviewed did not contain proof of mailing.
- g. The Company was reminded of Rule X of the National Council on Compensation Insurance Manual as the return premium was calculated incorrectly on 6.1 percent of the cancelled workers' compensation policies reviewed.
- h. The Company was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(h) as 4.0 percent of the cancelled businessowners files reviewed did not contain proper file documentation.
- i. The Company was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(h) as 4.0 percent of the cancelled general liability files reviewed did not contain a copy of the cancellation notice to the insured.
- j. The Company was reminded of the provisions of NCGS 58-41-15(b) as the cancellation notice for 2.0 percent of the cancelled general liability policies reviewed was not issued at least 15 days prior to the termination date when the policy was cancelled for nonpayment of premium.
- k. The Company was reminded of Rule 11 of the Commercial Lines Manual as the return premium was calculated incorrectly on 4.0 percent of the cancelled general liability policies reviewed.
- l. The Company was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(h) as 8.0 percent of the cancelled commercial inland marine files reviewed did not contain of a copy of the cancellation notice to the insured.
- m. The Company was deemed to be in apparent violation of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(h) as 100 percent of the nonrenewed commercial automobile files requested were not provided for review.
- n. The Company was deemed to be in apparent violation of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(h) as 26.0 percent of the nonrenewed workers' compensation files requested were not provided for review.
- *19 o. The Company was reminded of the provisions of NCGS 58-36-110(b) as the nonrenewal notice for 8.1 percent of the nonrenewed workers' compensation policies reviewed was not issued at least 45 days prior to the termination date.
- p. The Company was deemed to be in apparent violation of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(h) as 100 percent of the nonrenewed businessowners files requested were not provided for review.
- q. The Company was deemed to be in apparent violation of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(h) as 24.2 percent of the nonrenewed commercial inland marine files requested were not provided for review.
- r. The Company was reminded of the provisions of NCGS 58-41-20(c) as the nonrenewal notice for 4.0 percent of the nonrenewed commercial inland marine policies reviewed was not issued at least 45 days prior to the termination date.

TABLE OF STATUTES AND RULES

Statute/Rule	Title
NCGS 58-2-131	Examinations to be made; authority, scope, scheduling, and conduct of examinations.
Statute/Rule	Title
NCGS 58-7-15	Kinds of insurance authorized.
NCGS 58-33-26	General license requirements.
NCGS 58-33-40	Appointment of agents.
NCGS 58-33-56	Notification to Commissioner of termination.
NCGS 58-36-30	Deviations.
NCGS 58-36-105	Certain workers' compensation insurance policy cancellations prohibited.
NCGS 58-36-110	Notice of nonrenewal, premium rate increase, or change in workers' compensation insurance coverage required.
NCGS 58-41-15	Certain policy cancellations prohibited.
NCGS 58-41-20	Notice of nonrenewal, premium rate increase, or change in coverage required.
NCGS 58-41-50	Policy form and rate filings; punitive damages; data required to support filings.
NCGS 58-63-15	Unfair methods of competition and unfair or deceptive acts or practices defined.
NCGS 20-309	Motor vehicle registration.
11 NCAC 4.0418	Total Losses on Motor Vehicles.
11 NCAC 4.0421	Handling of Loss and Claim Payments.

11 NCAC 10.1102	Rate Filings: Applicability.
11 NCAC 19.0102	Maintenance of Records.
11 NCAC 19.0104	Policy Records.
11 NCAC 19.0106	Records Required for Examination.

CONCLUSION

***20** An examination has been conducted on the market conduct affairs of Selective Insurance Company of the Southeast for the period January 1, 2004 through December 31, 2006 with analyses of certain operations of the Company being conducted through February 11, 2008. The Company's response to this report, if any, is available upon request.

This examination was conducted in accordance with the North Carolina Department of Insurance and the National Association of Insurance Commissioners Market Regulation Handbook procedures, including analyses of Company operations in the areas of policyholder treatment, marketing, underwriting and rating, terminations, and claims practices.

In addition to the undersigned, James P. McQuillan, CPCU and Letha Lombardi, North Carolina Market Conduct Examiners, participated in this examination.

Respectfully submitted,
/s/ Norma M. Rafter
Norma M. Rafter, CPCU
Examiner-In-Charge
Market Regulation Division
State of North Carolina

I have reviewed this examination report and it meets the provisions for such reports prescribed by this Division and the North Carolina Department of Insurance.

/s/ Ernest L. Nickerson
Ernest L. Nickerson, FLMI, ACS, AIRC, ARM, RHU
Deputy Commissioner
Market Regulation Division
State of North Carolina

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2010 WL 2866925

State of North Carolina

*1 Report on Market Conduct Examination of the

Geico Indemnity Company

Government Employees Insurance Company

Chevy Chase, Maryland

January 26, 2010

MARKET CONDUCT REPORTS

North Carolina Department of Insurance



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Report

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Raleigh, North Carolina

January 26, 2010
Honorable Wayne Goodwin
Commissioner of Insurance
Department of Insurance
State of North Carolina
Dobbs Building
430 N. Salisbury Street
Raleigh, North Carolina 27603
Honorable Elizabeth Sammis
Commissioner of Insurance
Maryland Insurance Administration
200 St. Paul Place, Suite 2700
Baltimore, MD 21202
Honorable Commissioners:

Pursuant to your instructions and in accordance with the provisions of [North Carolina General Statute \(NCGS\) 58-2-131](#), a target examination has been made of the market conduct activities of

GEICO INDEMNITY COMPANY (NAIC #22055)

GOVERNMENT EMPLOYEES INSURANCE COMPANY (NAIC #22063)

NAIC Exam Tracking System Exam Number: NC170-M59

Chevy Chase, Maryland

hereinafter generally referred to as the Company, at the North Carolina Department of Insurance (Department) Office located at 11 S. Boylan Avenue, Raleigh, North Carolina. A report thereon is respectfully submitted.

FOREWORD

This examination reflects the North Carolina insurance activities of GEICO Indemnity Company and Government Employees Insurance Company. The examination is, in general, a report by exception. Therefore, much of the material reviewed will not be contained in this written report, as reference to any practices, procedures, or files that manifested no improprieties were omitted.

SCOPE OF EXAMINATION

***2** This examination commenced on November 9, 2009 and covered the period of January 1, 2006 through December 31, 2008 with analyses of certain operations of the Company being conducted through January 25, 2010. All comments made in this report reflect conditions observed during the period of the examination.

The examination was arranged and conducted by the Department. It was made in accordance with Market Regulation standards established by the Department and procedures established by the National Association of Insurance Commissioners (NAIC) and accordingly included tests of policyholder treatment, underwriting and rating, terminations, and claims practices.

It is the Department's practice to cite companies in apparent violation of a statute or rule when the results of a sample show errors/noncompliance at or above the following levels: 0 percent for consumer complaints, sales and advertising, producers who were not appointed and/or licensed, and the use of forms and rates/rules that were neither filed with nor approved by the Department; 7 percent for claims; and 10 percent for all other areas reviewed. When errors are detected in a sample, but the error rate is below the applicable threshold for citing an apparent violation, the Department issues a reminder to the company.

EXECUTIVE SUMMARY

This market conduct examination revealed concerns with Company procedures and practices in the following area:

Terminations - failure to issue termination notices for private passenger automobile.

Specific violations related to each area of concern are noted in the appropriate section of this report. All North Carolina General Statutes and rules of the North Carolina Administrative Code cited in this report may be viewed on the North Carolina Department of Insurance Web site www.ncdoi.com, by clicking "Helpful Links."

This examination identified a single non-compliant practice, which may extend to other jurisdictions. The Company is directed to take immediate corrective action to demonstrate its ability and intention to conduct business in North Carolina according to its insurance laws and regulations. When applicable, corrective action for other jurisdictions should be addressed.

All unacceptable or non-compliant practices may not have been discovered or noted in this report. Failure to identify or criticize improper or non-compliant business practices in North Carolina or in other jurisdictions does not constitute acceptance of such practices. Examination report findings that do not reference specific insurance laws, regulations, or bulletins are presented to improve the Company's practices and ensure consumer protection.

POLICYHOLDER TREATMENT

Privacy of Financial and Health Information

The Company provided privacy of financial and health information documentation for the examiners' review. The Company exhibited policies and procedures in place so that nonpublic personal financial or health information is not disclosed unless the customer or consumer has authorized the disclosure. The Company was found to be compliant with the provisions of NCGS 58-39-25, 58-39-26, and 58-39-27.

UNDERWRITING AND RATING

Overview

*3 The Company's marketing philosophy in North Carolina focuses on the private passenger automobile line of business. The Company's private passenger automobile policies were reviewed for adherence to underwriting guidelines, file documentation, and premium determination. Additionally, the policies were examined to determine compliance with the appropriate North Carolina statutes and rules, policy provisions, and the applicable policy manual rules.

Private Passenger Automobile

The Company provided a listing of 121,840 active private passenger automobile policies issued during the period under examination. One hundred policies were randomly selected and received for review.

The Company's private passenger automobile coverages were written utilizing manual and deviated rates. Policies were written on a 6-month basis. Risk placement was determined by the Company's underwriting guidelines and the underwriter. No discrepancies were noted in the Company's use of its underwriting guidelines. All policy files contained sufficient documentation to support the Company's classification of the risk.

The Company was reminded of the provisions of Title 11 of the North Carolina Administrative Code (NCAC), Chapter 10, Section 0602(b) as 1 file reviewed (1.0 percent error ratio) did not contain a consent to rate form signed by the insured.

All premiums charged were deemed correct.

TERMINATIONS

Overview

The Company's termination procedures for private passenger automobile policies were reviewed to determine compliance with the appropriate North Carolina statutes and rules, policy provisions, and the applicable policy manual rules. Special attention was placed on the validity and reason for termination, timeliness in issuance of the termination notice, policy refund (where applicable), and documentation of the policy file. A total of 179,823 policies were terminated during the period under examination. The examiners randomly selected 150 terminations for review.

Private Passenger Automobile Cancellations

One hundred cancelled private passenger automobile policies were randomly selected and received for review from a population of 179,711.

The reason for cancellation was deemed valid for all policies reviewed. The review revealed the following reasons for cancellation:

Reason for Cancellation	Number of Policies	Percentage
Nonpayment of premium	63	63.0
Insured's request	27	27.0
Coverage rewritten	5	5.0
Risk no longer eligible	4	4.0
Underwriting reasons	1	1.0
Total	100	100.0

The Company was not required to issue cancellation notices for 32 of the cancellations reviewed as these policies were cancelled at the request of the insured or the coverage was rewritten. Cancellation notices for the remaining 68 policies stated the specific reason for cancellation. All insureds and loss payees were given proper and timely notification of cancellation.

*4 All premium refunds were deemed correct. The Company issued the refunds in a timely manner.

The final area of this review encompassed documentation of the policy file. All policy files reviewed contained sufficient documentation to support the action taken by the Company. The Company was reminded of the provisions of [NCGS 20-309.2](#) as the North Carolina Notice of Termination Form (FS-4) was not submitted to the North Carolina Division of Motor Vehicles (DMV) when liability coverages were cancelled for 1 policy reviewed (1.0 percent error ratio).

Private Passenger Automobile Nonrenewals

Fifty nonrenewed private passenger automobile policies were randomly selected and received for review from a population of 112. The Company was reminded of the provisions of [NCGS 58-2-131\(a\)](#), [58-2-185](#), and [11 NCAC 19.0106\(a\)\(4\)\(h\)](#) as 1 file (2.0 percent error ratio) was an invalid receipt as there was no indication the policy was nonrenewed by the Company. The review was based on the remaining 49 files.

The reason for nonrenewal was deemed valid for all policies reviewed. The review revealed the following reasons for nonrenewal.

Reason for Nonrenewal	Number of Policies	Percentage
Risk no longer eligible	41	83.7
Underwriting reasons	8	16.3
Total	49	100.0

The Company was deemed to be in apparent violation of the provisions of [NCGS 58-36-85\(b\)](#) as 6 files reviewed (12.2 percent error ratio) contained no indication a nonrenewal notice had been sent to the insured. The Company was reminded of the provisions of [NCGS 58-36-85\(c\)](#) as the termination date on 4 nonrenewal notices reviewed (8.2 percent error ratio) was invalid. The Company was reminded of the provisions of [NCGS 58-36-85\(c\)](#) as the nonrenewal notice for 1 insured (2.0 percent error ratio) was not issued at least 60 days prior to the termination date.

The Company was reminded of the provisions of [NCGS 58-37-25\(b\)](#) as 2 insureds (4.1 percent error ratio) were not offered renewal coverage in the North Carolina Reinsurance Facility when they were no longer eligible for voluntary coverage.

The final area of this review encompassed documentation of the policy file. All files reviewed contained sufficient documentation to support the action taken by the Company. The Company is reminded of the provisions of [NCGS 20-309.2](#) as 1 file reviewed (2.0 percent error ratio) provided no evidence an FS-4 was submitted to the DMV when liability coverage's were cancelled.

CLAIMS PRACTICES

Overview

The Company's claims practices were reviewed to determine compliance with the appropriate North Carolina statutes and rules and policy provisions. The review encompassed paid, automobile medical payment, first and third party bodily injury, closed without payment, subrogated, total loss settlement, and litigated claims.

***5** Claims service in North Carolina is provided from the regional office in Virginia Beach, Virginia under the direction of the Assistant Vice President of Claims. Company adjusters handle all claims. With respect to total losses, salvage logs are maintained electronically as part of the claims handling system. The adjuster handling the claim is ultimately responsible for maintenance. Seven hundred claims were randomly selected for review from a population of 140,930.

Paid Claims

Two hundred third party property damage and first party automobile physical damage paid claims were randomly selected and received for review from a population of 88,437. The claim files were reviewed for timeliness of payment, supporting documentation, and accuracy of payment.

The following types of claims were reviewed and the average payment time is noted in calendar days:

Type of Claim	Payment Time
Third party property damage	9.0
Automobile physical damage	6.0

All payments issued by the Company were deemed to be accurate. Deductibles were correctly applied and depreciation taken was reasonable.

All claim files reviewed contained documentation to support the Company's payments. The documentation consisted of appraisals, estimates, or repair bills. Claims were not appraised in a timely manner for 4 claims (2.0 percent error ratio). This matter could result in an apparent violation of the provisions of [NCGS 58-63-15\(11\)](#) if the occurrence is of such frequency as to be considered a general business practice.

Automobile Medical Payment Claims

One hundred automobile medical payment claims were randomly selected and received for review from a population of 8,086. The claim files were reviewed to determine if the Company had engaged in any unfair claim practices. The review of the automobile medical payment claims disclosed no apparent violations of the provisions of [NCGS 58-63-15](#).

First and Third Party Bodily Injury Claims

One hundred first and third party bodily injury claims were randomly selected and received for review from a population of 15,640. The claim files were reviewed to determine whether the Company had engaged in any unfair claim practices. The review of first and third party bodily injury claims disclosed no apparent violations of the provisions of [NCGS 58-63-15](#).

Closed Without Payment Claims

Fifty closed without payment claims were randomly selected and received for review from a population of 1,083. The claim files were reviewed to determine if the Company's reasons for closing the claims without payment were valid.

The claim files reviewed contained documentation that supported the Company's reasons for closing the claims without payment. All reasons for denial or closing the files without payment were deemed valid. Claims were denied on an average of 12.5 calendar days for the 3-year period. The review of closed without payment claims disclosed no apparent violations of the provisions of [NCGS 58-63-15](#).

Subrogated Claims

*6 One hundred subrogated claims were randomly selected and received for review from a population of 10,176. The claim files were reviewed to determine if the insured's deductible was properly reimbursed by the Company when subrogation was successful.

All reimbursements were deemed to be correct and were issued on a 3-year average of 1.0 calendar day from the date the Company collected the monies.

Total Loss Settlement Claims

One hundred total loss settlement claims were randomly selected and received for review from a population of 17,118. The claim files were reviewed to determine if the settlements were equitable and timely.

The Company primarily used CCC Valuescope to establish the actual cash value of totaled vehicles. All settlements were deemed equitable. Claims were not paid in a timely manner for 3 claims (3.0 percent error ratio). This matter could result in an apparent violation of the provisions of [NCGS 58-63-15\(11\)](#) if the occurrence is of such frequency as to be considered a general business practice. The Company settled all remaining claims in a timely manner. The payments were issued on a 3-year average of 25.5 calendar days. No apparent violations of the provisions of [11 NCAC 4.0418](#), or [4.0421](#) were noted during this review.

Litigated Claims

Fifty litigated claims were randomly selected and received for review from a population of 390. The claim files were reviewed to determine if the Company had engaged in any unfair claims practices. The review of litigated claims disclosed no apparent violation of the provisions of [NCGS 58-63-15](#).

SUMMARY

The Market Conduct examination revealed the following:

1. Underwriting and Rating

a. The Company was reminded of the provisions of [11 NCAC 10.0602\(b\)](#) as 1.0 percent of the active private passenger automobile files reviewed did not contain a consent to rate form signed by the insured.

2. Terminations

a. The Company was reminded of the provisions of [NCGS 20-309.2](#) as the North Carolina Notice of Termination Form was not submitted to the North Carolina Division of Motor Vehicles for 1.0 percent of the cancelled private passenger automobile policies reviewed.

b. The Company was reminded of the provisions of [NCGS 58-2-131\(a\)](#), [58-2-185](#), and [11 NCAC 19.0106\(a\)\(4\)\(h\)](#) as 2.0 percent of the nonrenewed private passenger automobile files received were invalid receipts as there was no indication the policy was nonrenewed by the Company.

c. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-36-85\(b\)](#) as they failed to issue termination notices for 12.2 percent of the nonrenewed private passenger automobile policies reviewed.

d. The Company was reminded of the provisions of [NCGS 58-36-85\(c\)](#) as the termination date on 8.2 percent of the private passenger automobile nonrenewal notices reviewed was invalid.

e. The Company was reminded of the provisions of [NCGS 58-36-85\(c\)](#) as the nonrenewal notice for 2.0 percent of the nonrenewed private passenger automobile policies reviewed was not issued at least 60 days prior to the nonrenewal date.

*7 f. The Company was reminded of the provisions of [NCGS 58-37-25\(b\)](#) as 4.1 percent of the insureds, whose private passenger automobile policies were nonrenewed when they were no longer eligible for voluntary coverage, were not offered renewal coverage in the North Carolina Reinsurance Facility.

g. The Company was reminded of the provisions of [NCGS 20-309.2](#) as the North Carolina Notice of Termination Form was not submitted to the North Carolina Division of Motor Vehicles for 2.0 percent of the nonrenewed private passenger automobile policies reviewed.

TABLE OF STATUTES AND RULES

Statute/Rule	Title
NCGS 58-2-131	Examinations to be made; authority, scope, scheduling, and conduct of examinations.
NCGS 58-2-185	Record of business kept by companies and agents; Commissioner may inspect.
NCGS 58-36-85	Termination of a nonfleet private passenger motor vehicle insurance policy.
NCGS 58-37-25	General obligations of insurers.
NCGS 58-39-25	Notice of insurance information practices.
NCGS 58-39-26	Federal privacy disclosure notice requirements.
NCGS 58-39-27	Privacy notice and disclosure requirement exceptions.
NCGS 58-63-15	Unfair methods of competition and unfair or deceptive acts or practices defined.
NCGS 20-309	Motor vehicle registration.
11 NCAC 4.0418	Total Losses on Motor Vehicles.
11 NCAC 4.0421	Handling of Loss and Claim Payments.
11 NCAC 10.0602	Consent to Rate Procedures: Rate Bureau Coverages.
11 NCAC 19.0106	Records Required for Examination.

CONCLUSION

An examination has been conducted on the market conduct affairs of GEICO Indemnity Company and Government Employees Insurance Company for the period January 1, 2006 through December 31, 2008 with analyses of certain operations

of the Company being conducted through January 25, 2010. The Company's response to this report, if any, is available upon request.

This examination was conducted in accordance with the North Carolina Department of Insurance and the National Association of Insurance Commissioners Market Regulation Handbook procedures, including analyses of Company operations in the areas of policyholder treatment, underwriting and rating, terminations, and claims practices.

In addition to the undersigned, James P. McQuillan, CPCU and Letha Lombardi, North Carolina Market Conduct Examiners, participated in this examination.

Respectfully submitted,
/s/ Norma M. Rafter
Norma M. Rafter
Examiner-In-Charge
Market Regulation Division
State of North Carolina

I have reviewed this examination report and it meets the provisions for such reports prescribed by this Division and the North Carolina Department of Insurance.

*8 /s/ Tracy M. Biehn
Tracy M. Biehn, LPCS, MBA
Deputy Commissioner
Market Regulation Division
State of North Carolina

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2013 WL 6921728

State of North Carolina

*1 Report on Market Conduct Examination

Peak Property and Casualty Insurance Corporation

Stevens Point, Wisconsin

September 13, 2013

MARKET CONDUCT REPORTS

North Carolina Department of Insurance



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Raleigh, North Carolina

September 13, 2013

Honorable Wayne Goodwin

Commissioner of Insurance

Department of Insurance

State of North Carolina

Dobbs Building

430 N. Salisbury Street

Raleigh, North Carolina 27603

Honorable Ted Nickel

Commissioner of Insurance

Office of the Commissioner of Insurance

State of Wisconsin

125 South Webster Street

Madison, Wisconsin 53703-3474

Honorable Commissioners:

Pursuant to your instructions and in accordance with the provisions of [North Carolina General Statute \(NCGS\) 58-2-131](#) through [58-2-134](#), a general examination has been made of the market conduct activities of

Peak Property and Casualty Insurance Corporation (NAIC #18139)

***2** NAIC Exam Tracking System Exam Number: NC299-M22

Stevens Point, Wisconsin

hereinafter generally referred to as the Company, at the North Carolina Department of Insurance (Department) office located at 11 S. Boylan Avenue, Raleigh, North Carolina. A report thereon is respectfully submitted.

FOREWORD

This examination reflects the North Carolina insurance activities of Peak Property and Casualty Insurance Corporation. The examination is, in general, a report by exception. Therefore, much of the material reviewed will not be contained in this written report, as reference to any practices, procedures, or files that manifested no concerns were omitted.

SCOPE OF EXAMINATION

This examination commenced on December 31, 2012, and covered the period of January 1, 2007, through December 31, 2011, with analyses of certain operations of the Company being conducted through August 14, 2013. All comments made in this report reflect conditions observed during the period of the examination.

The examination was arranged and conducted by the Department. It was made in accordance with Market Regulation standards established by the Department and procedures established by the National Association of Insurance Commissioners (NAIC) and accordingly included tests of policyholder treatment, marketing, underwriting practices, terminations, and claims practices.

It is the Department's practice to cite companies in violation of a statute or rule when the results of a sample show errors/noncompliance at or above the following levels: 0 percent for consumer complaints, sales and advertising, producers who were not appointed and/or licensed and the use of forms and rates/rules that were neither filed with nor approved by the Department; 7 percent for claims; and 10 percent for all other areas reviewed. When errors are detected in a sample, but the error rate is below the applicable threshold for citing a violation, the Department issues a reminder to the company.

EXECUTIVE SUMMARY

This market conduct examination revealed concerns with Company procedures and practices in the following area:

Consumer Complaints – response time to Departmental inquiries.

Specific violations related to each area of concern are noted in the appropriate section of this report. All North Carolina General Statutes and rules of the North Carolina Administrative Code cited in this report may be viewed on the North Carolina Department of Insurance Web site www.ncdoi.com by clicking “INSURANCE DIVISIONS” then “Legislative Services”.

This examination identified various non-compliant practices, some of which may extend to other jurisdictions. The Company is directed to take immediate corrective action to demonstrate its ability and intention to conduct business in North Carolina according to its insurance laws and regulations. When applicable, corrective action for other jurisdictions should be addressed.

***3** All unacceptable or non-compliant practices may not have been discovered or noted in this report. Failure to identify improper or non-compliant business practices in North Carolina or in other jurisdictions does not constitute acceptance of such practices. Examination report findings that do not reference specific insurance laws, regulations, or bulletins are presented to improve the Company's practices and ensure consumer protection.

COMPANY OVERVIEW

History and Profile

The Company was incorporated in North Carolina on August 16, 1985, as General Electric Residential Mortgage Corporation and commenced business on August 29, 1985. The Company's name was changed to Peak Property and Casualty Insurance Corporation (Peak) on July 10, 1991. On November 16, 1993, the Company was acquired from GE Capital Mortgage Corporation by Guaranty National Insurance Company (GNIC) and was redomiciled in the state of Colorado. On November 16, 1999, Royal & Sun Alliance Insurance Group (RSA) purchased Orion Auto, Inc. and all of its subsidiaries, including GNIC and its subsidiaries. In March 2005, RSA transferred the direct ownership of Peak from GNIC to Viking Insurance Company of Wisconsin (Viking).

On November 1, 2005, Sentry Insurance, a Mutual Company (Sentry), acquired 100% indirect ownership of Peak in connection with an acquisition of Viking from Royal & Sun Alliance USA, Inc. On December 15, 2006, Peak redomesticated from the state of Colorado to the state of Wisconsin.

Under an administrative services agreement, Sentry furnishes the Company underwriting, policy issuance, financial reporting, tax compliance, customer service, agent support, marketing, legal, claims, actuarial, and other services. The Company's home office is located at 1800 North Point Drive, Stevens Point, Wisconsin.

Company Operations and Management

The Company writes private passenger automobile insurance. It is licensed in 39 states and the District of Columbia, and distributes its products through an independent agency force using standard contract forms and commission schedules.

Direct written premium for the Company's 2011 countrywide property and casualty operations was \$229,802,466. North Carolina's production for the same period was \$46,054,716. Premiums written in North Carolina between 2007 and 2011 increased approximately 35.6 percent. The charts below outline the Company's mix of business for selected lines in 2011 and loss ratios in North Carolina for the examination period.

Line of Business	Written Premium	Percentage
Private Passenger Automobile Liability	\$28,171,598	61.2
Private Passenger Automobile Physical Damage	\$17,883,118	38.8
Total	\$46,054,716	100.0

Year	Written Premium	Earned Premium	Incurred Losses	Loss Ratio
2007	\$ 33,960,452	\$ 34,519,625	\$ 29,941,673	86.7
2008	\$ 32,830,935	\$ 33,144,274	\$ 28,830,833	87.0
2009	\$ 38,104,287	\$ 36,579,031	\$ 36,811,477	100.6
2010	\$ 44,268,087	\$ 43,157,227	\$ 42,742,132	99.0
2011	\$ 46,054,716	\$ 45,464,159	\$ 39,087,262	86.0

Certificate of Authority

*4 The Certificate of Authority issued to the Company was reviewed for the period under examination. The certificate was reviewed to determine compliance with the provisions of [NCGS 58-7-15](#). The Company's writings in North Carolina were deemed to be in compliance with the authority granted.

Disaster Recovery Procedures

The purpose of business continuity/disaster recovery is to enable the business to continue providing critical services to their customers in the event of a disaster and to recover from any interruption to their information systems.

The overall disaster recovery goal at Sentry is to minimize system downtime and loss of data by maintaining a disaster recovery site and print-to-mail recovery site. These sites can be fully configured and ready to operate in a minimal amount of time. They provide redundancy for all hardware platforms, data storage, network, telecommunications infrastructure, and print operations.

In addition to recovery of critical technical operations, a business continuity strategy is in place that includes development and maintenance of business and technical plans to ensure the continuance of critical business functions at the time of disaster.

Rate Evasion Procedures

The Company has established procedures to address nonfleet private passenger automobile insurance rate evasion fraud by identifying any ineligible risk as defined in [NCGS 58-37-1\(4a\)](#) and verifying residency of the policyholder who owns a motor vehicle registered or principally garaged in North Carolina. The Company was found to be in compliance with the provisions of [NCGS 58-2-164](#).

POLICYHOLDER TREATMENT

Consumer Complaints

The Company's complaint handling procedures were reviewed to determine compliance with applicable North Carolina statutes and rules.

The Company's complaint register was reconciled with a listing provided by the Consumer Services Division of the Department. The Company's complaint register was in compliance with provisions of Title 11 of the North Carolina Administrative Code, (NCAC), Chapter 19, Section 0103.

Fifty of the 263 complaints from the Department's listing were randomly selected for review. The distribution of complaints requiring a response to the Department is shown in the chart below.

Type of Complaint	Total
Claims	41
Underwriting	6
Administrative	3
Total	50

The Company's response to each complaint was deemed to be appropriate to the circumstances. The Company was deemed to be in violation of the provisions of [11 NCAC 1.0602](#) as two of the complaints reviewed (4.0 percent error ratio) were responded to in excess of the seven calendar day requirement of this rule.

The average service time to respond to a Departmental complaint was seven calendar days. A chart of the Company's response time follows:

Service Days	Number of Files	Percentage of Total
--------------	-----------------	---------------------

1 - 7	48	96.0
8 - 14	1	2.0
15 - 28	1	2.0
Total	50	100.0

Privacy of Financial and Health Information

*5 The Company provided privacy of financial and health information documentation for the examiners' review. The Company exhibited policies and procedures in place so that nonpublic personal financial or health information is not disclosed unless the customer or consumer has authorized the disclosure. The Company was found to be compliant with the provisions of NCGS 58-39-25, 58-39-26, and 58-39-27.

MARKETING

Policy Forms and Filings

Policy forms and filings for the Company were reviewed to determine compliance with appropriate North Carolina statutes and rules. Filings for the private passenger automobile line of business were made by the Insurance Services Office (ISO) on the Company's behalf. Deviations for this line of business were made to the Department by the Company.

Sales and Advertising

The Company's sales and advertising practices were reviewed to determine compliance with the provisions of NCGS 58-63-15.

The examiners reviewed bulletins and brochures that are provided to producers for their own informational purposes. The Company reported it does not actively advertise in North Carolina.

No unfair or deceptive trade practices were noted in this segment of the examination.

Social Media

The Company reported it does not currently use social media outlets for marketing or advertising purposes. However, the parent Company, Sentry, utilizes Facebook, WordPress Blog, Twitter, LinkedIn, and GooglePlus to promote the corporate name and brands. The Company does not specifically advertise products via social media. In addition, the Company's producer agreement prohibits the agent from using the Company's name or logo in any advertisement or advertising without advance written permission.

Producer Licensing

The Company's procedures for appointment and termination of its producers were reviewed to determine compliance with the appropriate North Carolina statutes and rules. Fifty appointed and 50 terminated producer files were randomly selected for review from populations of 2,219 and 2,925, respectively.

All appointment and termination forms reviewed were submitted to the Department in accordance with the timetables stipulated under the provisions of [NCGS 58-33-40](#) and [58-33-56](#).

Agency Management

The marketing effort in North Carolina is under the direction of the Regional Agency Sales Manager located at the regional office in Virginia. The Company has 694 active agencies with approximately 4,098 appointed producers in North Carolina.

There are three Agency Sales Managers in North Carolina that are responsible for discussing agency performance with producers. Formal agency reviews are not conducted annually by the Agency Sales Managers, but agency performance is discussed on a regular basis.

UNDERWRITING PRACTICES

Overview

*6 The Company's marketing philosophy in North Carolina is directed to the private passenger automobile line of business. The Company's private passenger automobile policies were reviewed for adherence to underwriting guidelines, file documentation, and premium determination. Additionally, the policies were examined to determine compliance with the appropriate North Carolina statutes and rules, policy provisions, and the applicable policy manual rules.

Private Passenger Automobile

The Company provided a listing of 173,472 active private passenger automobile policies issued during the period under examination. One hundred policies were randomly selected for review.

The Company's private passenger automobile policies were written on a six or twelve month basis. Liability coverages were written utilizing manual rates. Physical damage coverages were written using both manual rates and on a consent to rate basis. Risk placement was determined by the Company's underwriting guidelines and the underwriter. No discrepancies were noted in the Company's use of its underwriting guidelines.

The Company was reminded of the provisions of [11 NCAC 19.0102\(a\)](#) and [19.0106\(a\)\(3\)\(g\)](#) as the Company was not able to identify the producer for two policy files reviewed (2.0 percent error ratio).

The Company was reminded of the provisions of [NCGS 58-36-30\(a\)](#), [58-37-35\(l\)](#), and [58-41-50\(f\)](#) as the premiums on five policy files reviewed were calculated incorrectly (5.0 percent error ratio). The rating errors consisted of the following:

- Inexperienced Operator Surcharge was not correctly applied on three policies.
- Liability premiums were calculated incorrectly on two policies.

The rating errors resulted in four premium undercharges and one premium overcharge to the insureds. A refund in the amount of \$32.00 was issued by the Company for the overcharge. The remaining premiums charged were deemed correct.

TERMINATIONS

Overview

The Company's termination procedures for its private passenger automobile policies were reviewed to determine compliance with the appropriate North Carolina statutes and rules, policy provisions, and the applicable policy manual rules. Special attention was placed on the validity and reason for termination, timeliness in issuance of the termination notice, policy refund (where applicable), and documentation of the policy file. A total of 132,590 policies were terminated during the period under examination. The examiners randomly selected 150 terminations for review.

Private Passenger Automobile Cancellations

One hundred cancelled private passenger automobile policies were randomly selected for review from a population of 131,314.

The reason for cancellation was deemed valid for all policies reviewed. The review revealed the following reasons for cancellation:

Reason for Cancellation	Number of Policies	Percentage
Nonpayment of premium	82	82.0
Finance company request	8	8.0
Insured's request	7	7.0
Rewritten	2	2.0
Underwriting reasons	1	1.0
Total	100	100.0

*7 The Company was not required to issue cancellation notices for 17 of the cancellations reviewed as these policies were cancelled at the request of the insured or finance company, or coverage was rewritten.

All premium refunds were deemed correct. The Company issued refunds in a timely manner.

The final area of this review encompassed documentation of the policy file. All policy files reviewed contained sufficient documentation to support the action taken by the Company. The Company sent the North Carolina Notice of Termination Form (FS-4) to the North Carolina Division of Motor Vehicles (DMV) when liability coverages were cancelled. The Company was deemed to be in compliance with the provisions of [NCGS 20-309](#).

Private Passenger Automobile Nonrenewals

Fifty nonrenewed private passenger automobile policies were randomly selected for review from a population of 1,276. The reason for nonrenewal was deemed valid for all policies reviewed. The review revealed the following reasons for nonrenewal:

Reason for Nonrenewal	Number of Policies	Percentage
Agent no longer appointed	44	88.0
Underwriting reasons	5	10.0

Risk no longer eligible	1	2.0
Total	50	100.0

The nonrenewal notices for the policies reviewed stated the specific reason for nonrenewal.

The final area of this review encompassed documentation of the policy file. The Company sent the FS-4 to the DMV when liability coverage was nonrenewed. The Company was deemed to be in compliance with the provisions of [NCGS 20-309](#).

Declinations/Rejections

The Company reported that no applications were declined/rejected during the period under examination.

CLAIMS PRACTICES

Overview

The Company's claims practices were reviewed to determine compliance with the appropriate North Carolina statutes and rules and policy provisions. The review encompassed paid, automobile medical payment, first and third party bodily injury, closed without payment, subrogated, total loss settlement, and litigated claims.

Claims service in North Carolina is under the direction of the Senior Director - Claims located in Stevens Point, Wisconsin. Claims services are provided by Company adjusters located in the Goldsboro, North Carolina branch office.

Company and independent adjusters provide the claims service. Independent adjusters have no check or draft authority. The Company agency force does not adjust any claims and does not have claims draft authority.

Seven hundred claims were randomly selected for review from a population of 65,087.

Paid Claims

The examiners randomly selected 200 of the 35,344 first party automobile physical damage and third party property damage claims paid during the period under examination. The claim files were reviewed for timeliness of payment, supporting documentation, and accuracy of payment.

***8** The following types of claims were reviewed and the average payment time is noted in calendar days:

Type of Claim	Payment Time
Automobile physical damage	20.0
Third party property damage	23.0

All payments issued by the Company were deemed to be accurate. Deductibles were correctly applied and depreciation taken was reasonable.

All claim files reviewed contained documentation to support the Company's payments. The documentation consisted of appraisals, estimates, repair bills, or inventory listings.

First party claims were not investigated in a timely manner for two claims (2.0 percent error ratio). First party claims were not appraised in a timely manner for one claim (1.0 percent error ratio). First party claims were not paid in a timely manner for three claims (3.0 percent error ratio). Third party claims were not acknowledged in a timely manner for one claim (1.0 percent error ratio). Third party claims were not appraised in a timely manner for one claim (1.0 percent error ratio). This matter could result in a violation of the provisions of [NCGS 58-63-15\(11\)](#) if the occurrence is of such frequency as to be considered a general business practice.

Automobile Medical Payment Claims

One hundred automobile medical payment claims were randomly selected for review from a population of 5,669. The claim files were reviewed to determine if the Company had engaged in any unfair claims practices. Automobile medical payment claims were not investigated in a timely manner for one claim (1.0 percent error ratio). This matter could result in a violation of the provisions of [NCGS 58-63-15\(11\)](#) if the occurrence is of such frequency as to be considered a general business practice.

First and Third Party Bodily Injury Claims

One hundred first and third party bodily injury claims were randomly selected for review from a population of 8,548. The claim files were reviewed to determine whether the Company had engaged in any unfair claims practices. First and third party bodily injury claims were not investigated in a timely manner for seven claims (7.0 percent error ratio). This matter could result in a violation of the provisions of [NCGS 58-63-15\(11\)](#) if the occurrence is of such frequency as to be considered a general business practice.

Closed Without Payment Claims

One hundred closed without payment claims were randomly selected for review from a population of 5,339. The claim files were reviewed to determine if the Company's reasons for closing the claims without payment were valid.

The claim files reviewed contained documentation that supported the Company's reasons for closing the claims without payment. All reasons for denial or closing the files without payment were deemed valid. Claims were denied on an average of 19 calendar days for the 5-year period. The review of closed without payment claims disclosed no violations of the provisions of [NCGS 58-63-15](#).

Subrogated Claims

*9 Fifty subrogated claims were randomly selected for review from a population of 2,104. The claim files were reviewed to determine if the insured's deductible was properly reimbursed by the Company when subrogation was successful.

All reimbursements were deemed to be correct and were issued on a 5-year average of one calendar day from the date the Company collected the monies. The review of subrogated claims disclosed no violations of the provisions of [NCGS 58-63-15\(11\)](#).

Total Loss Settlement Claims

One hundred total loss settlement claims were randomly selected for review from a population of 7,657. The claim files were reviewed to determine if the settlements were equitable and timely.

The Company primarily used CCC Information Services, Inc. in addition to on-site independent adjusters to establish the actual cash value of totaled vehicles. All settlements were deemed equitable. The Company settled all claims in a timely manner. The payments were issued on a 5-year average of 21 calendar days. No violations of the provisions of [NCGS 58-63-15\(11\)\(h\)](#), [11 NCAC 4.0418](#) or [4.0421](#) were noted during this review.

Litigated Claims

Fifty litigated claims were randomly selected for review from a population of 426. The claim files were reviewed to determine if the Company had engaged in any unfair claims practices. The review of litigated claims disclosed no violations of the provisions of [NCGS 58-63-15\(11\)](#).

SUMMARY

The Market Conduct examination revealed the following:

1. Policyholder Treatment

a. The Company was deemed to be in violation of the provisions of [11 NCAC 1.0602](#) as the responses to 4.0 percent of the Departmental inquiries reviewed were in excess of the seven calendar day requirement of this rule.

2. Underwriting Practices

a. The Company was reminded of the provisions of [11 NCAC 19.0102\(a\)](#) and [19.0106\(a\)\(3\)\(g\)](#) as the Company was unable to identify the producer for 2.0 percent of the active private passenger automobile files reviewed.

b. The Company was reminded of the provisions of [NCGS 58-36-30\(a\)](#), [58-37-35\(l\)](#), and [58-41-50\(f\)](#) as 5.0 percent of the active private passenger automobile policies reviewed were rated incorrectly.

TABLE OF STATUTES AND RULES

<u>Statute/Rule</u>	<u>Title</u>
NCGS 58-2-131	Examinations to be made; authority, scope, scheduling, and conduct of examinations.
NCGS 58-2-132	Examination reports.
NCGS 58-2-133	Conflict of interest; cost of examinations; immunity from liability.
NCGS 58-2-134	Cost of certain examinations.
NCGS 58-2-164	Rate evasion fraud; prevention programs
NCGS 58-7-15	Kinds of insurance authorized.
NCGS 58-33-40	Appointment of agents.

NCGS 58-33-56	Notification to Commissioner of termination.
NCGS 58-36-30	Deviations.
NCGS 58-37-1	Definitions.
NCGS 58-37-35	The Facility; functions; administration.
NCGS 58-39-25	Notice of insurance information practices.
NCGS 58-39-26	Federal privacy disclosure notice requirements.
NCGS 58-39-27	Privacy notice and disclosure requirement exceptions.
NCGS 58-41-50	Policy form and rate filings; punitive damages; data required to support filings.
NCGS 58-63-15	Unfair methods of competition and unfair or deceptive acts or practices defined.
NCGS 20-309	Motor vehicle registration.
11 NCAC 1.0602	Insurance Companies' Response to Departmental Inquiries.
11 NCAC 4.0418	Total Losses on Motor Vehicles.
11 NCAC 4.0421	Handling of Loss and Claim Payments.
11 NCAC 19.0102	Maintenance of Records.
11 NCAC 19.0103	Complaint Records.
11 NCAC 19.0106	Records Required for Examination.

CONCLUSION

***10** An examination has been conducted on the market conduct affairs of Peak Property and Casualty Insurance Corporation for the period January 1, 2007, through December 31, 2011, with analyses of certain operations of the Company being conducted through August 14, 2013.

This examination was conducted in accordance with the North Carolina Department of Insurance and the National Association of Insurance Commissioners Market Regulation Handbook procedures, including analyses of Company operations in the areas of policyholder treatment, marketing, underwriting practices, terminations, and claims practices.

In addition to the undersigned, Gina Abate, North Carolina Market Conduct Examiner, participated in this examination and in the preparation of this report.

Respectfully submitted,
/s/ James P. McQuillan
James P. McQuillan, CPCU, AIT
Examiner-In-Charge
Market Regulation Division
State of North Carolina

I have reviewed this examination report and it meets the provisions for such reports prescribed by this Division and the North Carolina Department of Insurance.

/s/ Tracy M. Biehn
Tracy Biehn, LPCS, MBA
Deputy Commissioner
Market Regulation Division
State of North Carolina

End of Document

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2013 WL 3148649

State of North Carolina

*1 Report on Market Conduct Examination

The Members Insurance Company

Charlotte, North Carolina

January 28, 2013

MARKET CONDUCT REPORTS

North Carolina Department of Insurance



Image 1 within document in PDF format.

Report

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SUMMARY

TABLE OF STATUTES AND RULES

CONCLUSION

Raleigh, North Carolina

January 28, 2013

Honorable Wayne Goodwin

Commissioner of Insurance

Department of Insurance

State of North Carolina

Dobbs Building

430 N. Salisbury Street

Raleigh, North Carolina 27603

Honorable Commissioner:

Pursuant to your instructions and in accordance with the provisions of [North Carolina General Statute \(NCGS\) 58-2-131](#) through [58-2-134](#), a general examination has been made of the market conduct activities of

THE MEMBERS INSURANCE COMPANY (NAIC #12617)

NAIC Exam Tracking System Exam Number: NC170-M111

Charlotte, North Carolina

hereinafter generally referred to as the Company, at the North Carolina Department of Insurance (Department) office located at 11 S. Boylan Avenue, Raleigh, North Carolina. A report thereon is respectfully submitted.

FOREWORD

***2** This examination reflects the North Carolina insurance activities of The Members Insurance Company. The examination is, in general, a report by exception. Therefore, much of the material reviewed will not be contained in this written report, as reference to any practices, procedures, or files that manifested no improprieties were omitted.

SCOPE OF EXAMINATION

This examination commenced on June 20, 2011 and covered the period of January 1, 2008 through December 31, 2010 with analyses of certain operations of the Company being conducted through January 28, 2013. All comments made in this report reflect conditions observed during the period of the examination.

The examination was arranged and conducted by the Department. It was made in accordance with Market Regulation standards established by the Department and procedures established by the National Association of Insurance Commissioners

(NAIC) and accordingly included tests of policyholder treatment, marketing, underwriting practices, terminations, and claims practices.

It is the Department's practice to cite companies in apparent violation of a statute or rule when the results of a sample show errors/noncompliance at or above the following levels: 0 percent for consumer complaints, sales and advertising, producers who were not appointed and/or licensed, and the use of forms and rates/rules that were neither filed with nor approved by the Department; 7 percent for claims; and 10 percent for all other areas reviewed. When errors are detected in a sample, but the error rate is below the applicable threshold for citing an apparent violation, the Department issues a reminder to the company.

EXECUTIVE SUMMARY

This market conduct examination revealed concerns with Company procedures and practices in the following areas:

Consumer Complaints – incomplete complaint log, files not provided for review, response time to Departmental inquiries, NAIC company code not included on Company response, and incomplete file documentation.

Policy Forms and Filings – use of unfiled new business application, declarations page, and consent-to-rate form for private passenger automobile. Use of unfiled declarations page and notice of adverse underwriting decision for homeowners.

Appointment and Termination of Producers – failure to perform background checks on appointed producers, failure to notify the Department of termination, failure to provide confirmation of termination, and failure to notify the producers of termination.

Underwriting Practices – Private Passenger Automobile: use of unfiled premium payment installment charge, rating errors, and applications accepted from producers who were not appointed. Homeowners: applications accepted from producers who were not licensed in North Carolina and rating errors.

Terminations – Homeowners cancellations: proof of mailing was not provided. Private passenger automobile nonrenewals: insufficient notice sent and failure to issue the North Carolina Notice of Termination form (FS-4) to the Division of Motor Vehicles (DMV).

***3** Specific violations related to each area of concern are noted in the appropriate section of this report. All North Carolina General Statutes and rules of the North Carolina Administrative Code cited in this report may be viewed on the North Carolina Department of Insurance Web site www.ncdoi.com, by clicking “INSURANCE DIVISIONS” then “Legislative Services”.

This examination identified various non-compliant practices, some of which may extend to other jurisdictions. The Company is directed to take immediate corrective action to demonstrate its ability and intention to conduct business in North Carolina according to its insurance laws and regulations. When applicable, corrective action for other jurisdictions should be addressed.

All unacceptable or non-compliant practices may not have been discovered or noted in this report. Failure to identify or criticize improper or non-compliant business practices in North Carolina or in other jurisdictions does not constitute acceptance of such practices. Examination report findings that do not reference specific insurance laws, regulations, or bulletins are presented to improve the Company's practices and ensure consumer protection.

COMPANY OVERVIEW

History and Profile

The Members Insurance Company (TMIC) was incorporated on June 9, 2006 in the State of North Carolina and commenced business on October 1, 2006. TMIC is a stock casualty insurance company created by Carolina Motor Club, Inc. (AAA

Carolinas). The stock is held 100 percent by TMIC Holding Company, LLC which is managed by the ultimate parent, Carolina Motor Club, Inc.

Company Operations and Management

The Company is a writer of private passenger automobile insurance and homeowners insurance and is licensed in North Carolina only.

Direct written premium for the Company's 2010 property and casualty operations was \$9,235,037. Premiums written in North Carolina between 2008 and 2010 increased approximately 152.7 percent. The charts below outline the Company's mix of business for selected lines in 2010 and loss ratios in North Carolina for the examination period.

Line of Business		Written Premium	Percentage
Private Passenger Automobile		\$8,719,966	94.4
Homeowners		\$ 515,071	5.6
Total		\$9,235,037	100.0

Year	Written Premium	Earned Premium	Incurred Losses ^a	Loss Ratio
2008	\$3,654,076	\$3,444,812	\$2,278,390	66.1
2009	\$5,189,565	\$4,788,912	\$3,657,013	76.4
2010	\$9,235,037	\$8,126,263	\$5,439,249	66.9

^a Does not include IBNRs

Certificates of Authority

The Certificates of Authority issued to the Company were reviewed for the period under examination. These certificates were reviewed to determine compliance with the provisions of [NCGS 58-7-15](#). The Company's writings in North Carolina were deemed to be in compliance with the authority granted.

Disaster Recovery Procedures

***4** AAA Carolinas uses a disaster recovery (DR) site in Providence, Rhode Island. Insurance data is replicated in near real time to redundant servers in the DR location. All servers are virtual servers for fast recovery and high availability. The hardware platforms are fully redundant for processor, memory and power for high availability. All circuits and network infrastructure is fully redundant. Data is backed up daily with weekly backups stored offsite. Backup data is restored on a regular basis into a test environment. All branch offices can access the disaster recovery site via virtual private network connections.

POLICYHOLDER TREATMENT

Consumer Complaints

The Company's complaint handling procedures were reviewed to determine compliance with applicable North Carolina statutes and rules.

The Company's complaint register was reconciled with a listing furnished by the Consumer Services Division of the Department. All complaints from the Department's listing of 22 were selected for review.

The Company was deemed to be in apparent violation of the provisions of Title 11 of the North Carolina Administrative Code, (NCAC), Chapter 19, Section 0103 as 1 complaint (4.5 percent error ratio) was not listed on the Company's complaint register.

The Company was deemed to be in apparent violation of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0103](#), and [19.0106\(a\)\(2\)](#) as 4 complaint files (18.2 percent error ratio) were not provided for review.

The distribution of complaints requiring a response to the Department is shown in the chart below.

Type of Complaint	Total
Underwriting	11
Claims	9
Administrative	2
Total	22

The Company's response to each complaint was deemed to be appropriate to the circumstances. The Company was deemed to be in apparent violation of the provisions of [11 NCAC 1.0602](#) as 4 of the complaints reviewed (18.2 percent error ratio) were responded to in excess of the 7 calendar day requirement of this rule.

The Company was deemed to be in apparent violation of the provisions of [11 NCAC 4.0123](#) as 2 responses to Departmental inquiries (9.1 percent error ratio) did not contain the Company's NAIC company code. The Company was deemed to be in apparent violation of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0103](#), and [19.0106\(a\)\(2\)](#) as 4 complaint files (18.2 percent error ratio) did not contain a copy of the inquiry letter from the Department and/or a copy of the consumer complaint.

The average service time to respond to a Departmental complaint was 8 calendar days. A chart of the Company's response time follows:

Service Days	Number of Files	Percentage of Total
1 - 7	18	81.9
8 - 14	1	4.5
15 - 21	0	0.0
22 - 30	1	4.5

31 - 60	2	9.1
Total	22	100.0

Privacy of Financial and Health Information

*5 The Company provided privacy of financial and health information documentation for the examiners' review. The Company exhibited policies and procedures in place so that nonpublic personal financial or health information is not disclosed unless the customer or consumer has authorized the disclosure. The Company was found to be compliant with the provisions of NCGS 58-39-25, 58-39-26, and 58-39-27.

MARKETING

Policy Forms and Filings

Policy forms and filings for the Company were reviewed to determine compliance with appropriate North Carolina statutes and rules. Emphasis of the review was placed on the following lines of business:

1. Private Passenger Automobile
2. Homeowners

Filings for the private passenger automobile and homeowners lines of business were made by the North Carolina Rate Bureau on behalf of the Company. Deviations for these lines of business were made to the Department by the Company.

The Company was deemed to be in apparent violation of the provisions of NCGS 58-3-150 and 11 NCAC 10.1201(c) as the Private Passenger Automobile Policy new business application, declarations page, and consent-to-rate form had not been filed with and approved by the Department.

The Company was deemed to be in apparent violation of the provisions of NCGS 58-3-150 and 11 NCAC 10.1201(c) as the Homeowners Policy Declarations page had not been filed with and approved by the Department.

The Company was deemed to be in apparent violation of the provisions of NCGS 58-3-150 and 58-39-55(a) as the notice of adverse underwriting decision used for homeowners terminations had not been filed with and approved by the Department.

Sales and Advertising

Sales and advertising practices of the Company were reviewed to determine compliance with the provisions of NCGS 58-63-15.

The Company sells its products through independent insurance agents. Advertising materials are approved by the President and the material is maintained in the headquarters in Charlotte, North Carolina. No unfair or deceptive trade practices were noted in this segment of the examination.

Producer Licensing

The Company's procedures for appointment and termination of its producers were reviewed to determine compliance with the appropriate North Carolina statutes and rules. Fifty appointed and 50 terminated producer files were randomly selected and received for review from populations of 150 and 99, respectively.

The Company was reminded of the provisions of 11 NCAC 19.0102(a), and 19.0106 (a)(3) as it was unable to provide confirmation of appointment for 1 appointed producer reviewed (2.0 percent error ratio). The Company was deemed to be in apparent violation of the provisions of 11 NCAC 6A.0412(2) as background checks were not performed on 31 of the appointed producers reviewed (62.0 percent error ratio).

*6 The Company was deemed to be in apparent violation of the provisions of NCGS 58-33-56(b) as it failed to notify the Department of the termination within 30 days for 24 terminated producers reviewed (48.0 percent error ratio). The Company was deemed to be in apparent violation of the provisions of 11 NCAC 19.0102(a) and 19.0106(a)(3) as it was unable to provide confirmation of termination for 10 terminated producers reviewed (20.0 percent error ratio). The Company was deemed to be in apparent violation of the provisions of NCGS 58-33-56(d) as notification of termination was not sent to any of the 50 terminated producers reviewed (100 percent error ratio).

Agency Management

The marketing effort is under the direction of the President, located in the home office in Charlotte, North Carolina. The Company has 26 active agencies with approximately 153 producers appointed in North Carolina as well as 1 field marketing representative. The president, marketing representative and underwriting and claim managers are responsible for the activities of the agency force and licensing. Meetings are conducted monthly for the largest agency and every 2 to 3 months for smaller agencies/agents.

UNDERWRITING PRACTICES

Overview

The Company's marketing philosophy in North Carolina focuses on personal lines coverages. The Company provided the examiners with listings of the following types of active policies for the period under examination:

1. Private Passenger Automobile
2. Homeowners

A random selection of 150 policies was made from a total population of 16,419. Each policy was reviewed for adherence to underwriting guidelines, file documentation, and premium determination. Additionally, the policies were examined to determine compliance with the appropriate North Carolina statutes and rules, policy provisions, and the applicable policy manual rules.

Private Passenger Automobile

The Company provided a listing of 15,336 active private passenger automobile policies issued during the period under examination. One hundred policies were randomly selected and received for review.

The Company's private passenger automobile policies were written on a 6 month basis. Liability coverages were written utilizing manual and deviated rates. Physical damage coverages were written using manual, deviated, or on a consent to rate basis. Risk placement was determined by the Company's underwriting guidelines and the underwriter. No discrepancies were noted in the Company's use of its underwriting guidelines.

The Company was deemed to be in apparent violation of the provisions of [NCGS 58-36-30\(a\)](#) and Rule 22 of the North Carolina Rate Bureau Personal Automobile Manual for a \$2.00 installment fee charge or the waiver of installment fee for premiums paid by electronic funds transfer without being filed with and approved by the Department.

*7 The Company was deemed to be in apparent violation of the provisions of [NCGS 58-37-40\(f\)](#) as it did not include agent compensation in the calculation of the recoupment surcharge for 21 policies (21.0 percent error ratio) resulting in an undercharge of the recoupment surcharge.

The Company was deemed to be in apparent violation of the provisions of [NCGS 58-33-40](#) as the producer was not properly appointed by the Company for 7 of the private passenger automobile active files reviewed (7.0 percent error ratio).

The Company was reminded of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0104](#), and [19.0106\(a\)\(4\)](#) as 2 files reviewed (2.0 percent error ratio) did not contain a signed consent to rate form.

The Company was reminded of the provisions of [11 NCAC 10.0602\(a\)\(2\)](#) as it did not comply with consent to rate procedures on 4 policies reviewed (4.0 percent error ratio) because the standard rate that would be charged for towing and labor and/or extended transportation coverage, without application of consent to rate, was not indicated on the application.

The Company was deemed to be in apparent violation of the provisions of [NCGS 58-37-35\(l\)](#) and [NCGS 58-36-30\(a\)](#) as 26 policies reviewed (26.0 percent error ratio) contained a total of 32 rating errors. The rating errors consisted of the following:

- Incorrect base rate for motorcycle applied on 1 policy.
- Incorrect inexperienced operator surcharge on 2 policies.
- Incorrect deviations applied on 7 policies.
- Airbag discount not applied to med pay coverage on 1 policy.
- Incorrect physical damage base rates for 15 policies.
- Incorrect Safe Driver Incentive Plan points applied on 5 policies.
- Incorrect territory was used to rate 1 policy.

The rating errors resulted in 21 premium overcharges and 5 premium undercharges to the insureds. At the request of the examiners, refunds in the amount of \$1,892.71 were issued by the Company for the overcharges. The remaining 74 premiums charged were deemed correct.

As a result of the incorrect physical damage base rates, the examiners requested the Company conduct a self audit. The Company identified 3,383 policies resulting in overcharges in the amount of \$171,875.98. All overcharges were returned to the policyholders prior to the conclusion of the examination.

Homeowners

The Company provided a listing of 1,083 active homeowners policies issued during the period under examination. Fifty policies were randomly selected and received for review.

The Company's homeowners coverages were written utilizing manual and deviated rates. Policies were written on an annual basis. Risk placement was determined by the Company's underwriting guidelines and the underwriter. No discrepancies were noted in the Company's use of its underwriting guidelines. All policy files contained sufficient documentation to support the Company's classification of the risk.

*8 The Company was deemed to be in apparent violation of the provisions of [NCGS 58-33-5](#) and [58-33-26](#) as 2 of the applications reviewed (4.0 percent error ratio) were accepted from a producer who was not licensed in North Carolina.

The Company was reminded of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0104](#), and [19.0106\(a\)\(4\)](#) as 3 files reviewed (6.0 percent error ratio) did not contain proper file documentation.

The Company was deemed to be in apparent violation of the provisions of [NCGS 58-36-30\(a\)](#) as 29 policies reviewed (58.0 percent error ratio) contained a total of 42 rating errors. The rating errors consisted of the following:

- The Company failed to charge for Refrigerated Property coverage on 22 policies.
- Various company filed deviations were applied incorrectly on 11 policies.
- Four policies were rated using an incorrect construction factor.
- Incorrect premiums were charged for Water Back-Up coverage on 3 policies.
- An incorrect territory was used to rate 2 policies.

The rating errors resulted in 26 premium undercharges and 2 premium overcharges to the insureds. At the request of the examiners, refunds in the amount of \$103.00 were issued by the Company for the overcharges. The remaining 22 premiums charged were deemed correct.

TERMINATIONS

Overview

The Company's termination procedures were reviewed to determine compliance with the appropriate North Carolina statutes and rules, policy provisions, and the applicable policy manual rules. The review focused on the following lines of business:

1. Private Passenger Automobile
2. Homeowners

Special attention was placed on the validity and reason for termination, timeliness in issuance of the termination notice, policy refund (where applicable), and documentation of the policy file. A total of 11,474 policies were terminated during the period under examination. The examiners randomly selected 158 terminations for review.

Private Passenger Automobile Cancellations

One hundred cancelled private passenger automobile policies were randomly selected and received for review from a population of 11,306.

The review revealed the following reasons for cancellation:

Reason for Cancellation	Number of Policies	Percentage
Nonpayment of premium	69	69.0
Insured's request	25	25.0
Rewritten	3	3.0
Underwriting reasons	2	2.0
Risk no longer eligible	1	1.0
Total	100	100.0

The Company was not required to issue cancellation notices for 28 of the cancellations reviewed as these policies were cancelled at the request of the insured or coverage was rewritten. Cancellation notices for the remaining 72 policies stated the specific reason for cancellation. The Company was reminded of the provisions of [NCGS 58-36-85\(b\)](#) and [11 NCAC 4.0422](#) as an ineligible reason for cancellation was used to terminate 2 policies reviewed (2.0 percent error ratio). The Company was reminded of the provisions of [NCGS 58-36-85\(c\)](#) as it failed to provide sufficient notice of cancellation for 7 policies reviewed (7.0 percent error ratio).

*9 The Company was reminded of the provisions of [NCGS 58-36-30\(a\)](#) and Rule 10 of the Personal Auto Manual as the return premium was calculated incorrectly for 8 policies reviewed (8.0 percent error ratio). One of the errors resulted in an understatement of refund to the insured. At the request of the examiners, an additional refund was issued in the amount of \$3.94. The remaining premium refunds were deemed correct. The Company issued the refunds in a timely manner.

The Company was reminded of the provisions of [NCGS 58-36-85\(b\)\(3\)](#) as it did not send a written termination notice for 2 files reviewed (2.0 percent error ratio) for which there was no written request from the insured to terminate the policy. The Company was reminded of the provisions of [NCGS 20-309.2](#) as the FS-4 was not submitted to the DMV when liability coverages were cancelled for 3 policies reviewed (3.0 percent error ratio).

The final area of this review encompassed documentation of the policy file. The remaining files reviewed contained sufficient documentation to support the action taken by the Company.

Homeowners Cancellations

Fifty cancelled homeowners policies were randomly selected and received for review from a population of 160.

The reason for cancellation was deemed valid for all policies reviewed. The review revealed the following reasons for cancellation:

Reason for Cancellation	Number of Policies	Percentage
Insured's request	24	48.0
Nonpayment of premium	18	36.0
Underwriting reasons	5	10.0

Coverage rewritten	3	6.0
Total	50	100.0

The Company was not required to issue cancellation notices for 27 of the cancellations reviewed as these policies were cancelled at the request of the insured or the coverage was rewritten. Cancellation notices for the remaining 23 policies stated the specific reason for cancellation. All insureds and mortgagees were given proper and timely notification of cancellation.

The Company was reminded of the policy conditions as the return premium was calculated incorrectly for 2 policies reviewed (4.0 percent error ratio) resulting in understatement of refund to the insureds. At the request of the examiners, the Company issued additional refunds in the amount of \$67.40. The remaining premium refunds were deemed correct. The Company issued the refunds in a timely manner.

The final area of this review encompassed documentation of the policy file. The Company was deemed to be in apparent violation of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0104](#), and [19.0106\(a\)\(4\)](#) as 18 files did not contain proof of mailing of the cancellation notice (36.0 percent error ratio).

Private Passenger Automobile Nonrenewals

All nonrenewed private passenger automobile policies were selected and received for review from a population of 7.

***10** The reason for nonrenewal was deemed valid for all policies reviewed. The review revealed the following reasons for nonrenewal:

Reason for Nonrenewal	Number of Policies	Percentage
Risk no longer eligible	6	85.7
Producer no longer represents company	1	14.3
Total	7	100.0

The nonrenewal notices for the policies reviewed stated the specific reason for nonrenewal. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-36-85\(c\)](#) as the notice of nonrenewal was not sent at least 60 days prior to the termination date for 2 policies reviewed (28.6 percent error ratio).

The Company was deemed to be in apparent violation of the provisions of [NCGS 20-309.2](#) as the FS-4 was not submitted to the DMV when liability coverages were nonrenewed for 7 policies reviewed (100 percent error ratio).

The final area of this review encompassed documentation of the policy file. The remaining files reviewed contained sufficient documentation to support the action taken by the Company.

Homeowners Nonrenewals

All nonrenewed homeowners policies were selected and received for review from a population of 1.

The reason for nonrenewal was deemed valid for the policy reviewed. The review revealed the following reason for nonrenewal:

Reason for Nonrenewal	Number of Policies	Percentage
Underwriting reasons	1	100.0
Total	1	100.0

The nonrenewal notice for the policy reviewed stated the specific reason for nonrenewal. The insured and mortgagee were given proper and timely notification of nonrenewal.

The final area of this review encompassed documentation of the policy file. The policy file contained sufficient documentation to support the action taken by the Company.

Rejected/Declined

The Company reported there were no rejected or declined applications as coverage was bound at point of sale.

CLAIMS PRACTICES

Overview

The Company's claims practices were reviewed to determine compliance with the appropriate North Carolina statutes and rules and policy provisions. The review encompassed paid, automobile medical payment, first and third party bodily injury, closed without payment, subrogated, total loss settlement, and litigated claims.

Claims service in North Carolina is under the direction of the Claim Manager and is provided from the corporate office located in Charlotte, North Carolina. The staff is comprised of the Claim Manager, 1 Team Leader/Claim Adjuster, 4 Liability Claim Adjusters and 1 Material Damage Claim Adjuster. The Company has 6 staff adjusters for claim investigation and settlement. Independent appraisers are used for automobile and homeowners appraisals. Independent adjusters have no check or draft authority. With regard to total losses, a salvage log is maintained and managed on a daily basis by a claim assistant. The Company also uses their salvage vendor website to help with salvage inventory.

***11** Three hundred sixty-three claims were randomly selected for review from a population of 4,028.

Paid Claims

The examiners randomly selected and received 127 of the 1,839 first party automobile physical damage, first party property damage, and third party property damage claims paid during the period under examination. The claim files were reviewed for timeliness of payment, supporting documentation and accuracy of payment.

The following types of claims were reviewed and the average payment time is noted in calendar days:

Type of Claim	Payment Time
Automobile physical damage	9.0

First party (excluding automobile physical damage)	15.0
Third party property damage	11.0

All payments issued by the Company were deemed to be accurate. Deductibles were correctly applied and depreciation taken was reasonable.

All claim files reviewed contained documentation to support the Company's payments. The documentation consisted of appraisals, estimates, repair bills, or inventory listings.

First party automobile physical damage claims were not acknowledged in a timely manner for 1 claim (2.0 percent error ratio) and were not appraised in a timely manner for 1 claim (2.0 percent error ratio).

First party property damage claims were not acknowledged in a timely manner for 4 claims (14.8 percent error ratio), were not investigated in a timely manner for 1 claim (3.7 percent error ratio) and were not paid in a timely manner for 1 claim (3.7 percent error ratio).

Third party property damage claims were not acknowledged in a timely manner for 1 claim (2.0 percent error ratio), were not appraised in a timely manner for 2 claims (4.0 percent error ratio) and were not investigated in a timely manner for 1 claim (2.0 percent error ratio). These matters could result in an apparent violation of the provisions of [NCGS 58-63-15\(11\)](#) if the occurrence is of such frequency as to be considered a general business practice.

Automobile Medical Payment Claims

Fifty automobile medical payment claims were randomly selected and received for review from a population of 332. The claim files were reviewed to determine if the Company had engaged in any unfair claims practices. The review of automobile medical payment claims disclosed no apparent violations of the provisions of [NCGS 58-63-15\(11\)](#).

First and Third Party Bodily Injury Claims

Fifty first and third party bodily injury claims were randomly selected and received for review from a population of 291. The claim files were reviewed to determine whether the Company had engaged in any unfair claims practices.

Claims were not investigated in a timely manner for 3 claims (6.0 percent error ratio). This matter could result in an apparent violation of the provisions of [NCGS 58-63-15\(11\)](#) if the occurrence is of such frequency as to be considered a general business practice.

Closed Without Payment Claims

***12** Fifty closed without payment claims were randomly selected and received for review from a population of 1,261. The claim files were reviewed to determine if the Company's reasons for closing the claims without payment were valid.

Claims were not denied in a timely manner for 1 claim (2.0 percent error ratio). This matter could result in an apparent violation of the provisions of [NCGS 58-63-15\(11\)](#) if the occurrence is of such frequency as to be considered a general business practice.

The claim files reviewed contained documentation that supported the Company's reasons for closing the claims without payment. All reasons for denial or closing the files without payment were deemed valid. Claims were denied on an average of 14 calendar days for the 3-year period.

Subrogated Claims

All subrogated claims were selected and received for review from a population of 32. The claim files were reviewed to determine if the insured's deductible was properly reimbursed by the Company when subrogation was successful.

The insured's deductible was not reimbursed for 3 claims (9.4 percent error ratio). This matter could result in an apparent violation of the provisions of [NCGS 58-63-15\(11\)](#) if the occurrence is of such frequency as to be considered a general business practice. At the request of the examiners, the Company issued checks totaling \$709.75 to the insureds for their deductibles. The remaining reimbursements were deemed to be correct and were issued on a 3-year average of 1 calendar day from the date the Company collected the monies.

Total Loss Settlement Claims

Fifty total loss settlement claims were randomly selected and received for review from a population of 269. The claim files were reviewed to determine if the settlements were equitable and timely.

The Company primarily used CCC Information Services, Inc. in addition to on-site independent adjusters to establish the actual cash value of totaled vehicles. All settlements were deemed equitable.

Claims were not appraised in a timely manner for 5 claims (10.0 percent error ratio). This matter could result in an apparent violation of the provisions of [NCGS 58-63-15\(11\)](#) if the occurrence is of such frequency as to be considered a general business practice.

The Company settled the remaining claims in a timely manner. The payments were issued on a 3-year average of 17 calendar days. No apparent violations of the provisions of [NCGS 58-63-15\(11\)](#), [11 NCAC 4.0418](#), or [4.0421](#) were noted during this review.

Litigated Claims

All litigated claims were selected and received for review from a population of 4. The claim files were reviewed to determine if the Company had engaged in any unfair claims practices. The review of litigated claims disclosed no apparent violation of the provisions of [NCGS 58-63-15](#).

SUMMARY

The Market Conduct examination revealed the following:

1. Policyholder Treatment

***13** a. The Company was deemed to be in apparent violation of the provisions of [11 NCAC 19.0103](#) as 4.5 percent of the consumer complaints reviewed were not listed on the Company's complaint register.

- b. The Company was deemed to be in apparent violation of the provisions of 11 NCAC 19.0102(a), 19.0103, and 19.0106(a)(2) as 18.2 percent of the consumer complaints requested were not provided for review.
- c. The Company was deemed to be in apparent violation of the provisions of 11 NCAC 1.0602 as the responses to 18.2 percent of the Departmental inquiries reviewed were in excess of the 7 calendar day requirement of this rule.
- d. The Company was deemed to be in apparent violation of the provisions of 11 NCAC 4.0123 as 9.1 percent of the responses to a Departmental inquiry did not include its National Association of Insurance Commissioners code.
- e. The Company was deemed to be in apparent violation of the provisions of 11 NCAC 19.0102(a), 19.0103, and 19.0106(a)(2) as 18.2 percent of the consumer complaints reviewed did not contain a copy of the inquiry letter from the Department and/or a copy of the consumer's complaint.

2. Marketing

- a. The Company was deemed to be in apparent violation of the provisions of NCGS 58-3-150 and 11 NCAC 10.1201(c) as the Private Passenger Automobile Policy new business application, declarations page, and consent-to-rate form had not been filed with and approved by the Department.
- b. The Company was deemed to be in apparent violation of the provisions of NCGS 58-3-150 and 11 NCAC 10.1201(c) as its homeowners declarations page had not been filed with and approved by the Department.
- c. The Company was deemed to be in apparent violation of the provisions of NCGS 58-3-150 and 58-39-55(a) as its notice of Adverse Underwriting Decision used for homeowners terminations had not been filed with and approved by the Department.
- d. The Company was reminded of the provisions of 11 NCAC 19.0102(a), and 19.0106(a)(3) as confirmation of appointment was not provided for 2.0 percent of the appointed producers reviewed.
- e. The Company was deemed to be in apparent violation of the provisions of 11 NCAC 6A.0412(2) as background checks were not performed on 62.0 percent of the producers reviewed.
- f. The Company was deemed to be in apparent violation of the provisions of NCGS 58-33-56(b) as it failed to notify the Department of termination within 30 days for 48.0 percent of the terminated producers reviewed.
- g. The Company was deemed to be in apparent violation of the provisions of 11 NCAC 19.0102(a), and 19.0106(a)(3) as confirmation of termination was not provided for 20.0 percent of the terminated producers reviewed.
- h. The Company was deemed to be in apparent violation of the provisions of NCGS 58-33-56(d) as notification of termination was not sent to 100 percent of the terminated producers reviewed.

3. Underwriting Practices

- a. The Company was deemed to be in apparent violation of the provisions of NCGS 58-36-30(a) and Rule 22 of the North Carolina Rate Bureau Personal Automobile Manual for a \$2.00 installment fee charge or the waiver of installment fee for premiums paid by electronic funds transfer without being filed with and approved by the Department.

*14 b. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-37-40\(f\)](#) as it did not include agent compensation in the calculation of the recoupment surcharge for 21.0 percent of the active private passenger automobile policies resulting in an undercharge of the recoupment surcharge.

c. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-33-40](#) as the producer was not properly appointed by the Company for 7.0 percent of the active private passenger automobile files reviewed.

d. The Company was reminded of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0104](#), and [19.0106\(a\)\(4\)](#) as 2.0 percent of the active private passenger automobile files reviewed did not contain a signed consent to rate form.

e. The Company was reminded of the provisions of [11 NCAC 10.0602\(a\)\(2\)](#) as it did not comply with consent to rate procedures on 4.0 percent of the active private passenger automobile files reviewed because the standard rate that would be charged for towing and labor and/or extended transportation coverage, without application of consent to rate, was not indicated on the application.

f. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-37-35\(I\)](#) and [NCGS 58-36-30\(a\)](#) as 26.0 percent of the active private passenger automobile policies reviewed were rated incorrectly.

g. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-33-5](#) and [58-33-26](#) as 4.0 percent of the homeowners applications reviewed were accepted from a producer who was not licensed in North Carolina.

h. The Company was reminded of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0104](#), and [19.0106\(a\)\(4\)](#) as 6.0 percent of the active homeowners files reviewed did not contain proper file documentation.

i. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-36-30\(a\)](#) as 58.0 percent of the active homeowners policies reviewed were rated incorrectly.

4. Terminations

a. The Company was reminded of the provisions of [NCGS 58-36-85\(b\)](#) and [11 NCAC 4.0422](#) as an ineligible reason was used to terminate 2.0 percent of the cancelled private passenger automobile policies reviewed.

b. The Company was reminded of the provisions of [NCGS 58-36-85\(c\)](#) as it failed to provide sufficient notice of cancellation for 7.0 percent of the cancelled private passenger automobile policies reviewed.

c. The Company was reminded of the provisions of [NCGS 58-36-30\(a\)](#) and Rule 10 of the Personal Auto Manual as the return premium was calculated incorrectly for 8.0 percent of the cancelled private passenger automobile policies reviewed.

d. The Company was reminded of the provisions of [NCGS 58-36-85\(b\)\(3\)](#) as it did not send a written termination notice for 2.0 percent of the cancelled private passenger automobile files reviewed for which there was no written request from the insured to terminate the policy.

e. The Company was reminded of the provisions of [NCGS 20-309.2](#) as 3.0 percent of the cancelled private passenger automobile files reviewed contained no evidence that the North Carolina Notice of Termination Form was submitted to the Division of Motor Vehicles when liability coverages were cancelled.

*15 f. The Company was reminded of the policy conditions as the return premium was calculated incorrectly for 4.0 percent of the cancelled homeowners policies reviewed.

g. The Company was deemed to be in apparent violation of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0104](#), and [19.0106\(a\)\(4\)](#) as proof of mailing of the cancellation notice was not provided for 36.0 percent of the cancelled homeowners policies reviewed.

h. The Company was deemed to be in apparent violation of the provisions of [NCGS 58-36-85\(c\)](#) as the notice of nonrenewal was not sent at least 60 days prior to the termination date for 28.6 percent of the nonrenewed private passenger automobile policies reviewed.

i. The Company was deemed to be in apparent violation of the provisions of [NCGS 20-309.2](#) as the North Carolina Notice of Termination Form was not submitted to the North Carolina Division of Motor Vehicles for 100 percent of the nonrenewed private passenger automobile policies reviewed.

TABLE OF STATUTES AND RULES

<u>Statute/Rule</u>	<u>Title</u>
NCGS 58-2-131	Examinations to be made; authority, scope, scheduling, and conduct of examinations.
NCGS 58-2-132	Examination reports.
NCGS 58-2-133	Conflict of interest; cost of examinations; immunity from liability.
NCGS 58-2-134	Cost of certain examinations.
NCGS 58-3-150	Forms to be approved by the Commissioner.
NCGS 58-7-15	Kinds of insurance authorized.
NCGS 58-33-5	License required.
NCGS 58-33-26	General license requirements.
NCGS 58-33-40	Appointment of agents.
NCGS 58-33-56	Notification to Commissioner of termination.
NCGS 58-36-30	Deviations.
NCGS 58-36-85	Termination of a nonfleet private passenger motor vehicle insurance policy.
NCGS 58-37-35	The Facility; functions; administration.
NCGS 58-37-40	Plan of operation.
NCGS 58-39-25	Notice of insurance information practices.
NCGS 58-39-26	Federal privacy disclosure notice requirements.
NCGS 58-39-27	Privacy notice and disclosure requirement exceptions.
NCGS 58-39-55	Reasons for adverse underwriting decisions.

NCGS 58-63-15	Unfair methods of competition and unfair or deceptive acts or practices defined.
NCGS 20-309.2	Insurer shall notify Division of actions on insurance policies.
11 NCAC 1.0602	Insurance Companies' Response to Departmental Inquiries.
11 NCAC 4.0123	Use of Specific Company Name in Responses.
11 NCAC 4.0418	Total Losses on Motor Vehicles.
11 NCAC 4.0421	Handling of Loss and Claim Payments.
11 NCAC 4.0422	Cancellation of Insurance.
11 NCAC 6A.0412	Appointment of Agent: Responsibility of Company.
11 NCAC 10.0602	Consent to Rate Procedures: Rate Bureau Coverages.
11 NCAC 10.1201 11 NCAC 19.0102	General Requirements. Maintenance of Records.
11 NCAC 19.0103	Complaint Records.
11 NCAC 19.0104	Policy Records.
11 NCAC 19.0106	Records Required for Examination.

CONCLUSION

An examination has been conducted on the market conduct affairs of The Members Insurance Company for the period January 1, 2008 through December 31, 2010 with analyses of certain operations of the Company being conducted through January 28, 2013.

***16** This examination was conducted in accordance with the North Carolina Department of Insurance and the National Association of Insurance Commissioners Market Regulation Handbook procedures, including analyses of Company operations in the areas of policyholder treatment, marketing, underwriting practices, terminations, and claims practices.

In addition to the undersigned, James P. McQuillan, CPCU, AIT, North Carolina Market Conduct Examiner, and Bill George, CPCU, AIS, North Carolina Market Conduct Assistant Chief Property & Casualty Examiner, participated in this examination.

Respectfully submitted,
/s/ Norma M. Rafter
Norma M. Rafter, CPCU
Examiner-In-Charge
Market Regulation Division
State of North Carolina

I have reviewed this examination report and it meets the provisions for such reports prescribed by this Division and the North Carolina Department of Insurance.

/s/ Tracy M. Biehn
Tracy M. Biehn, LPCS, MBA

Deputy Commissioner
Market Regulation Division
State of North Carolina

End of Document

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2014 WL 2803588

State of North Carolina

*1 Report on Market Conduct Examination

Nationwide Mutual Insurance Company

Columbus, Ohio

April 2, 2014

MARKET CONDUCT REPORTS

North Carolina Department of Insurance

 Image 1 within document in PDF format.

Report

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Raleigh, North Carolina

April 2, 2014

Honorable Mary Taylor

Lieutenant Governor/Director

Department of Insurance

State of Ohio

50 West Town Street

Third Floor, Suite 300

Columbus, Ohio 43215

Honorable Wayne Goodwin

Commissioner of Insurance

Department of Insurance

State of North Carolina

Dobbs Building

430 N. Salisbury Street

Raleigh, North Carolina 27603

Honorable Director and Honorable Commissioner:

Pursuant to your instructions and in accordance with the provisions of [North Carolina General Statute \(NCGS\) 58-2-131](#) through [58-2-134](#), a general examination has been made of the market conduct activities of

Nationwide Mutual Insurance Company (NAIC #23787)

NAIC Exam Tracking System Exam Number: NC299-M26

Columbus, Ohio

hereinafter generally referred to as the Company, at the North Carolina Department of Insurance (Department) office located at 11 S. Boylan Avenue, Raleigh, North Carolina. A report thereon is respectfully submitted.

FOREWORD

*2 This examination reflects the North Carolina insurance activities of Nationwide Mutual Insurance Company. The examination is, in general, a report by exception. Therefore, much of the material reviewed will not be contained in this written report, as reference to any practices, procedures, or files that revealed no concerns were omitted.

SCOPE OF EXAMINATION

This examination commenced on May 20, 2013, and covered the period of January 1, 2008, through December 31, 2011, with analyses of certain operations of the Company being conducted through March 26, 2014. All comments made in this report reflect conditions observed during the period of the examination.

The examination was arranged and conducted by the Department. It was made in accordance with Market Regulation standards established by the Department and procedures established by the National Association of Insurance Commissioners (NAIC) and accordingly included tests of policyholder treatment, marketing, underwriting practices, terminations, and claims practices.

It is the Department's practice to cite companies in violation of a statute or rule when the results of a sample show errors/noncompliance at or above the following levels: 0 percent for consumer complaints, producers who were not appointed and/or licensed, and the use of forms and rates/rules that were neither filed with nor approved by the Department; 7 percent for claims; and 10 percent for all other areas reviewed. When errors are detected in a sample, but the error rate is below the applicable threshold for citing a violation, the Department issues a reminder to the company.

EXECUTIVE SUMMARY

This market conduct examination revealed concerns with Company procedures and practices in the following areas:

Policy Forms and Filings - Unfiled homeowners consent to rate form, unfiled homeowners adverse underwriting decision (AUD) notice, unfiled homeowners installment waiver deviation for electronic funds transfer, and unfiled installment waiver deviation for account billed policies.

Terminations - Private Passenger Automobile Cancellations: Missing North Carolina Notice of Termination form (FS-4) sent to the Division of Motor Vehicles (DMV). Homeowners Cancellations: Missing documentation to support cancellation. Commercial Automobile Cancellations: Missing FS-4 sent to DMV. Businessowners Cancellations: Missing documentation to support cancellation. Private Passenger Automobile Nonrenewals: Missing documentation to support nonrenewal. Commercial Automobile Nonrenewals: Missing FS-4 sent to DMV.

Specific violations related to each area of concern are noted in the appropriate section of this report. All North Carolina General Statutes and rules of the North Carolina Administrative Code cited in this report may be viewed on the North Carolina Department of Insurance Web site www.ncdoi.com by clicking "INSURANCE DIVISIONS" then "Legislative Services".

***3** This examination identified various non-compliant practices, some of which may extend to other jurisdictions. The Company is directed to take immediate corrective action to demonstrate its ability and intention to conduct business in North Carolina according to its insurance laws and regulations. When applicable, corrective action for other jurisdictions should be addressed.

All unacceptable or non-compliant practices may not have been discovered or noted in this report. Failure to identify improper or non-compliant business practices in North Carolina or in other jurisdictions does not constitute acceptance of such practices. Examination report findings that do not reference specific insurance laws, regulations, or bulletins are presented to improve the Company's practices and ensure consumer protection.

COMPANY OPERATIONS AND MANAGEMENT

The Company is a writer of a wide variety of insurance coverages, but the majority of business written is personal lines. The Company opened for new business in North Carolina in 1928 and is licensed in the District of Columbia, U.S. Virgin Islands and all states except New Jersey, where it operates on a non-admitted basis.

Direct written premium for the Company's 2011 countrywide property and casualty operations was \$3,408,088,111. North Carolina's production for the same period was \$486,909,106. Premiums written in North Carolina between 2008 and 2011 decreased approximately 16.4 percent. The charts below outline the Company's mix of business for selected lines in 2011 and loss ratios in North Carolina for the examination period.

Line of Business	Written Premium	Percentage
Private Passenger Automobile Liability	\$174,207,068	35.8
Homeowners	\$131,486,063	27.0
Private Passenger Automobile Physical Damage	\$121,701,730	25.0
Commercial Multiple Peril Fire	\$ 20,796,357	4.3
Other Liability	\$ 9,884,419	2.0
Commercial Multiple Peril Liability	\$ 7,909,686	1.6
Commercial Automobile Liability	\$ 6,894,522	1.4
Workers' Compensation	\$ 5,793,714	1.2
Inland Marine	\$ 3,948,312	0.8
Commercial Automobile Physical Damage	\$ 2,029,470	0.4
Other	\$ 2,257,765	0.5
Total	\$486,909,106	100.0

Year	Written Premium	Earned Premium	Incurred Losses	Loss Ratio
2008	\$ 582,698,815	\$ 578,148,544	\$ 307,437,025	53.2
2009	\$ 548,022,552	\$ 551,205,129	\$ 288,226,549	52.3
2010	\$ 519,780,485	\$ 529,003,115	\$ 233,564,037	44.2
2011	\$ 486,909,106	\$ 493,278,978	\$ 332,202,622	67.3

POLICYHOLDER TREATMENT

Consumer Complaints

The Company's complaint handling procedures were reviewed to determine compliance with applicable North Carolina statutes and rules.

*4 The Company's complaint register was reconciled with a listing furnished by the Consumer Services Division of the Department. The Company's complaint register was in compliance with provisions of Title 11 of the North Carolina Administrative Code, (NCAC), Chapter 19, Section 0103.

Fifty of the 990 complaints from the Department's listing were randomly selected for review. The distribution of complaints requiring a response to the Department is shown in the chart below.

Type of Complaint	Total
Claims	26
Underwritin	21
Administrative	3
Total	50

The Company's response to each complaint was deemed to be appropriate to the circumstances. Six complaints were responded to in excess of seven calendar days. However, extensions were requested and granted for those complaints.

The average service time to respond to a Departmental complaint was five calendar days. A chart of the Company's response time follows:

Service Days	Number of Files	Percentage of Total
1 - 7	44	88.0
8 - 14	4	8.0
15 - 21	2	4.0
Total	50	100.0

MARKETING

Policy Forms and Filings

Policy forms and filings for the Company were reviewed to determine compliance with appropriate North Carolina statutes and rules. The review was based on the following lines of business:

1. Private Passenger Automobile
2. Homeowners
3. Commercial Automobile
4. Businessowners

Filings for the private passenger automobile and homeowners lines of business were made by the North Carolina Rate Bureau on behalf of the Company. Filings for the commercial automobile line of business were made by the Insurance Services Office on behalf of the Company. Deviations for the private passenger automobile, homeowners, and commercial automobile lines of business were made to the Department by the Company. The Company's businessowner coverages were written utilizing independently filed rates.

The Company was deemed to be in violation of the provisions of [NCGS 58-36-55](#) as the homeowners consent to rate form was not filed with and approved by the Commissioner. The Company was deemed to be in violation of the provisions of [NCGS 58-39-55](#) as the homeowners AUD notice was not filed with and approved by the Commissioner. The Company was deemed to be in violation of the provisions of [NCGS 58-36-30\(a\)](#) and Rule A2 of the Homeowners Policy Program Manual as an installment waiver deviation for electronic funds transfer was not filed with and approved by the Commissioner. The Company was deemed to be in violation of the provisions of [NCGS 58-36-30\(a\)](#), Rule A2 of the Homeowners Policy Program Manual, and Rule 22 of the Personal Auto Manual as an installment waiver deviation for account billed policies was not filed with and approved by the Commissioner. The manual rules cited apply to each policy issued, not to each account, unless a deviation to the rules is filed with and approved by the Commissioner.

Producer Licensing

*5 The Company's procedures for appointment and termination of its producers were reviewed to determine compliance with the appropriate North Carolina statutes and rules. Fifty appointed and 50 terminated producer files were randomly selected for review from populations of 1,404 and 2,561, respectively.

All appointment forms reviewed were submitted to the Department in accordance with the timetables stipulated under the provisions of [NCGS 58-33-40](#). The Company was reminded of the provisions of [NCGS 58-33-56\(b\)](#) as it failed to notify the Department of the termination within 30 days for four terminated producers reviewed (8.0 percent error ratio). The Company was reminded of the provisions of [NCGS 58-33-56\(b\)](#) as it failed to notify the producer within 15 days of notification to the Department for three terminated producers (6.0 percent error ratio). The Company was reminded of the provisions of [11 NCAC 19.0102\(a\)](#) and [19.0106\(a\)\(3\)](#) as the notification of termination letter was not included in the file for two producers reviewed (4.0 percent error ratio).

UNDERWRITING PRACTICES

Overview

The Company's marketing philosophy in North Carolina is directed to personal and commercial lines. The Company provided the examiners with listings of the following types of active policies for the period under examination:

1. Private Passenger Automobile
2. Homeowners
3. Commercial Automobile
4. Businessowners

A random selection of 350 policies was made from a total population of 217,491. Each policy was reviewed for adherence to underwriting guidelines, file documentation, and premium determination. Additionally, the policies were examined to determine compliance with the appropriate North Carolina statutes and rules, policy provisions, and the applicable policy manual rules.

Private Passenger Automobile

The Company provided a listing of 5,791 active private passenger automobile policies issued during the period under examination. One hundred policies were randomly selected for review.

The Company's private passenger automobile policies were written on a 6 or 12-month basis. Liability coverages were written utilizing manual rates. Physical damage coverages were written using both manual rates and on a consent to rate basis. Risk placement was determined by the Company's underwriting guidelines and the underwriter. No discrepancies were noted in the Company's use of its underwriting guidelines.

All policy files contained sufficient documentation to support the Company's classification of the risk. All premiums charged were deemed correct.

Homeowners

The Company provided a listing of 190,819 active homeowners policies issued during the period under examination. One hundred policies were randomly selected for review.

The Company's homeowners coverages were written utilizing manual and deviated rates. Policies were written on an annual basis. Risk placement was determined by the Company's underwriting guidelines and the underwriter. No discrepancies were noted in the Company's use of its underwriting guidelines.

*6 The Company was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4) as five files did not contain applications, and one file did not contain a Wind or Hail Rejection Form signed by the insured (6.0 percent error ratio).

The Company was reminded of the provisions of NCGS 58-36-30(a) as four policies reviewed (4.0 percent error ratio) were rated incorrectly. The rating errors consisted of the following:

- The home purchase discount was not applied on two policies.
- The personal status deviation was improperly applied on one policy.
- An endorsement premium was not charged on one policy.

The rating errors resulted in two premium undercharges and two premium overcharges to the insureds. At the request of the examiners, refunds covering multiple terms in the amount of \$126.79 were issued by the Company for the overcharges. The remaining 96 premiums charged were deemed correct.

Commercial Automobile

The Company provided a listing of 2,534 active commercial automobile policies issued during the period under examination. Fifty policies were randomly selected for review.

The Company's commercial automobile coverages were written utilizing manual and deviated rates. Policies were written on an annual basis. Risk placement was determined by the Company's underwriting guidelines and the underwriter. No discrepancies were noted in the Company's use of its underwriting guidelines.

All policy files contained sufficient documentation to support the Company's classification of the risk. All policy premiums were deemed correct.

Businessowners

The Company provided a listing of 18,347 active businessowners policies issued during the period under examination. One hundred policies were randomly selected for review.

The Company's businessowners coverages were written utilizing manual and deviated rates. Policies were written on an annual basis. Risk placement was determined by the Company's underwriting guidelines and the underwriter. All files contained sufficient documentation to support the Company's classification of the risk. No discrepancies were noted in the Company's use of its underwriting guidelines.

The Company was reminded of the provisions of [NCGS 58-41-50\(f\)](#) as six policies reviewed (6.0 percent error ratio) had multiple rating errors. The rating errors consisted of the following:

- Territorial factor was incorrectly applied to business income coverage on three policies.
- Incorrect territory was used on one policy.
- Incorrect protection class was used on one policy.
- Incorrect building class was used on one policy.
- Incorrect town group factor was applied on one policy.
- Incorrect class modifier was applied on one policy.
- Incorrect liability exposure factor was applied on one policy.
- Incorrect business personal property special increment modifier was applied on one policy.

*7 The rating errors resulted in two premium undercharges and four premium overcharges to the insureds. At the request of the examiners, refunds covering multiple terms were issued by the Company in the amount of \$342.36. The remaining 94 premiums were deemed correct.

As a result of the premium calculation errors, the Company, on its own initiative, started an expanded self-audit prior to a formal request by the Department. The Company reviewed 193,168 policies, identifying 237 policies in error. All 237 policies in error resulted in overcharges. Overcharges for the self-audit totaling \$13,253.19 were reimbursed to the policyholders prior to the conclusion of the examination.

TERMINATIONS

Overview

The Company's termination procedures were reviewed to determine compliance with the appropriate North Carolina statutes and rules, policy provisions, and the applicable policy manual rules. The review was based on the following lines of business:

1. Private Passenger Automobile

2. Homeowners

3. Commercial Automobile

4. Businessowners

Special attention was placed on the validity and reason for termination, timeliness in issuance of the termination notice, policy refund (where applicable), and documentation of the policy file. A total of 290,841 policies were terminated during the period of time subject to this examination. The examiners randomly selected 632 terminations for review.

Private Passenger Automobile Cancellations

One hundred cancelled private passenger automobile policies were randomly selected for review from a population of 121,823.

The reason for cancellation was deemed valid for all policies reviewed. The review revealed the following reasons for cancellation:

Reason for Cancellation	Number of Policies	Percentage
Insured's request	45	45.0
Nonpayment of premium	37	37.0
Coverage rewritten	18	18.0
Total	100	100.0

The Company was not required to issue cancellation notices for 63 of the cancellations reviewed as these policies were cancelled at the request of the insured or the coverage was rewritten.

The Company was reminded of the provisions of [NCGS 58-36-30\(a\)](#) and Rule 10 of the North Carolina Personal Automobile Manual as one policy reviewed (1.0 percent error ratio) was cancelled using an incorrect cancellation method. The error resulted in an understatement of refund to the insured. At the request of the examiners, the Company issued an additional refund in the amount of \$452.85. The remaining premium refunds were deemed correct. The Company issued the refunds in a timely manner.

The final area of this review encompassed documentation of the policy file. The Company was reminded of the provisions of [NCGS 58-36-85\(b\)\(3\)](#) as it did not send a written termination notice for eight files reviewed (8.0 percent error ratio) for which there was no written request from the insured to terminate the policy.

*8 The Company was deemed to be in violation of the provisions of [11 NCAC 19.0102](#), [19.0104](#), and [19.0106\(a\)\(4\)](#) as it was unable to provide documentation to support the FS-4 submitted to the DMV when liability coverage was cancelled for 15 policies reviewed (15.0 percent error ratio).

The remaining policy files reviewed contained sufficient documentation to support action taken by the Company.

Homeowners Cancellations

One hundred cancelled homeowners policies were randomly selected for review from a population of 129,741.

The reason for cancellation was deemed valid for all policies reviewed. The review revealed the following reasons for cancellation:

Reason for Cancellation	Number of Policies	Percentage
Insured's request	53	53.0
Nonpayment of premium	35	35.0
Coverage rewritten	9	9.0
Underwriting reasons	3	3.0
Total	100	100.0

The Company was not required to issue cancellation notices for 62 of the cancellations reviewed as these policies were cancelled at the request of the insured or the coverage was rewritten. Cancellation notices for the remaining 38 policies stated the specific reason for cancellation. All insureds and mortgagees were given proper and timely notification of cancellation.

The Company was reminded of the policy provisions as one policy was not cancelled on the date requested by the insured (1.0 percent error ratio). This error resulted in a \$7.40 refund due the insured, which was issued at the request of the examiners.

The final area of this review encompassed documentation of the policy file. The Company was deemed to be in violation of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4) as it was unable to provide documentation to support cancellation for 15 policies reviewed (15.0 percent error ratio).

Commercial Automobile Cancellations

One hundred cancelled commercial automobile policies were randomly selected for review from a population of 10,666.

The reason for cancellation was deemed valid for all policies reviewed. The review revealed the following reasons for cancellation:

Reason for Cancellation	Number of Policies	Percentage
Insured's request	49	49.0
Nonpayment of premium	45	45.0
Underwriting reasons	4	4.0
Coverage rewritten	2	2.0
Total	100	100.0

The Company was not required to issue cancellation notices for 51 of the cancellations reviewed as these policies were cancelled at the request of the insured or the coverage was rewritten.

The Company was reminded of the provisions of Rule 11 of the Commercial Automobile Manual as two policies (2.0 percent error ratio) were cancelled pro-rata rather than .90 of the pro-rata unearned premium when the policy was cancelled at the request of the insured. The errors resulted in overstatement of refund to the insureds. The remaining premium refund calculations were deemed correct. The Company issued the refunds in a timely manner.

*9 The Company was reminded of the policy provisions as one policy was cancelled on the renewal date in lieu of the date requested by the insured (1.0 percent error ratio). This error resulted in a \$12.96 refund due the insured, which was issued at the request of the examiners.

The final area of this review encompassed documentation of the policy file. The Company was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4) as it was unable to provide documentation to support the refund issued to the insured for one policy reviewed (1.0 percent error ratio). The Company issued a refund of \$8.64 to the insured at the request of the examiners. The Company was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4) as it was unable to provide documentation to support cancellation for five policies reviewed (5.0 percent error ratio).

The Company was deemed to be in violation of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4) as it was unable to provide documentation to support the FS-4 submitted to the DMV when liability coverage was cancelled for all policies reviewed (100 percent error ratio).

Businessowners Cancellations

One hundred cancelled businessowners policies were randomly selected for review from a population of 6,915.

The reason for cancellation was deemed valid for all policies reviewed. The review revealed the following reasons for cancellation:

Reason for Cancellation	Number of Policies	Percentage
Insured's request	67	67.0
Nonpayment of premium	24	24.0
Underwriting reasons	5	5.0
Coverage rewritten	4	4.0
Total	100	100.0

The Company was not required to issue cancellation notices for 71 of the cancellations reviewed as these policies were cancelled at the request of the insured or the coverage was rewritten. Cancellation notices for the remaining 29 policies stated the specific reason for cancellation.

The Company was reminded of the provisions of Rule 11 of the Businessowners Manual as seven policies (7.0 percent error ratio) were cancelled pro-rata rather than .90 of the pro-rata unearned premium when the policy was cancelled at the request of the insured. The remaining premium refund calculations were deemed correct. The Company issued the refunds in a timely manner.

The Company was reminded of the provisions of [NCGS 58-41-15\(b\)](#) as the notice of cancellation was not sent at least 15 days prior to the termination date for one cancelled policy reviewed (1.0 percent error ratio).

The final area of this review encompassed documentation of the policy file. The Company was deemed to be in violation of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0104](#), and [19.0106\(a\)\(4\)](#) as it was unable to provide documentation to support cancellation for 12 cancelled policies reviewed (12.0 percent error ratio). The Company was reminded of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0104](#), and [19.0106\(a\)\(4\)](#) as it was unable to provide the proof of mailing for one cancelled policy reviewed (1.0 percent error ratio).

Private Passenger Automobile Nonrenewals

***10** The entire population of thirty-two nonrenewed private passenger automobile policies was selected for review.

The reason for nonrenewal was deemed valid for all policies reviewed. The review revealed the following reason for nonrenewal:

Reason for Nonrenewal	Number of Policies	Percentage
Underwriting reasons	32	100.0
Total	32	100.0

The nonrenewal notices for the policies reviewed stated the specific reason for nonrenewal. The insureds and lienholders were given proper and timely notification of nonrenewal.

The final area of this review encompassed documentation of the policy file. The Company was deemed to be in violation of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0104](#), and [19.0106\(a\)\(4\)](#) as the Company was unable to provide documentation supporting nonrenewal for 11 of the policies reviewed (34.4 percent error ratio).

The Company sent the FS-4 to the DMV when liability coverages were nonrenewed. The Company was deemed to be in compliance with the provisions of [NCGS 20-309.2](#).

Homeowners Nonrenewals

One hundred nonrenewed homeowners policies were randomly selected for review from a population of 21,113.

The reason for nonrenewal was deemed valid for all policies reviewed. The review revealed the following reason for nonrenewal.

Reason for Nonrenewal	Number of Policies	Percentage
Underwriting reasons	100	100.0
Total	100	100.0

The nonrenewal notices for the policies reviewed stated the specific reason for nonrenewal. The Company was reminded of the policy provisions as the notice of nonrenewal was not sent at least 30 days prior to the termination date for five policies reviewed (5.0 percent error ratio).

The final area of this review encompassed documentation of the policy file. The Company was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4) as it was unable to provide the nonrenewal notice for one policy file reviewed (1.0 percent error ratio).

Commercial Automobile Nonrenewals

Fifty nonrenewed commercial automobile policies were randomly selected for review from a population of 217.

The reason for nonrenewal was deemed valid for all files reviewed. The review revealed the following reason for nonrenewal:

Reason for Nonrenewal	Number of Policies	Percentage
Underwriting reasons	50	100.0
Total	50	100.0

The nonrenewal notices for the policies reviewed stated the specific reason for nonrenewal.

The final area of this review encompassed file documentation. The Company was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4) as it was unable to provide the nonrenewal notice for two policies reviewed (4.0 percent error ratio).

*11 The Company was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4), (g) as it was unable to provide the proof of mailing for one policy reviewed (2.0 percent error ratio).

The Company was deemed to be in violation of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4) as it was unable to provide documentation to support the FS-4 submitted to the DMV when liability coverage was nonrenewed for all policies reviewed (100.0 percent error ratio).

Businessowners Nonrenewals

Fifty nonrenewed businessowners policies were randomly selected for review from a population of 334.

The reason for nonrenewal was deemed valid for all policies reviewed. The review revealed the following reason for nonrenewal:

Reason for Nonrenewal	Number of Policies	Percentage
Underwriting reasons	50	100.0
Total	50	100.0

The Company was reminded of the provisions of [NCGS 58-41-20\(c\)](#) as the nonrenewal notice was not sent at least 45 days prior to the termination date for three policies reviewed (6.0 percent error ratio).

The final area of this review encompassed file documentation. The Company was reminded of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0104](#), and [19.0106\(a\)\(4\)](#) as it was unable to provide the nonrenewal notice for one policy file reviewed (2.0 percent error ratio).

CLAIMS PRACTICES

Overview

The Company's claims practices were reviewed to determine compliance with the appropriate North Carolina statutes and rules and policy provisions. The review encompassed paid, automobile medical payments, first and third party bodily injury, closed without payment, subrogated, total loss settlement, and litigated claims.

Eight hundred fifty claims were randomly selected for review from a population of 382,923.

Paid Claims

The examiners randomly selected 300 of the 212,916 first party automobile physical damage, first party property damage, and third party property damage claims paid during the period under examination. The claim files were reviewed for timeliness of payment, supporting documentation, and accuracy of payment.

The following types of claims were reviewed and the average payment time is noted in calendar days:

Type of Claim	Payment Time
Automobile physical damage	14.0
First party (excluding automobile physical damage)	10.0
Third party property damage	12.0

All payments issued by the Company were deemed to be accurate. Deductibles were correctly applied and depreciation taken was reasonable.

All claim files reviewed contained documentation to support the Company's payments. The documentation consisted of appraisals, estimates, repair bills, or inventory listings.

***12** First party property damage claims were not investigated in a timely manner for one claim (1.0 percent error ratio) and were not paid in a timely manner for one claim (1.0 percent error ratio). This matter could result in a violation of the provisions of [NCGS 58-63-15\(11\)](#) if the occurrence is of such frequency as to be considered a general business practice.

Automobile Medical Payment Claims

One hundred automobile medical payment claims were randomly selected for review from a population of 19,012. The claim files were reviewed to determine if the Company had engaged in any unfair claims practices. The review of automobile medical payment claims disclosed no violations of the provisions of [NCGS 58-63-15](#).

First and Third Party Bodily Injury Claims

One hundred first and third party bodily injury claims were randomly selected for review from a population of 27,654. The claim files were reviewed to determine whether the Company had engaged in any unfair claims practices. The review of first and third party bodily injury claims disclosed no violations of the provisions of [NCGS 58-63-15](#).

Closed Without Payment Claims

One hundred closed without payment claims were randomly selected for review from a population of 81,713. The claim files were reviewed to determine if the Company's reasons for closing the claims without payment were valid.

The claim files reviewed contained documentation that supported the Company's reasons for closing the claims without payment. All reasons for denial or closing the files without payment were deemed valid. Claims were denied on an average of six calendar days for the 3-year period. The review of closed without payment claims disclosed no violations of the provisions of [NCGS 58-63-15](#).

Subrogated Claims

One hundred subrogated claims were randomly selected for review from a population of 8,609. The claim files were reviewed to determine if the insured's deductible was properly reimbursed by the Company when subrogation was successful.

The insured's deductible was not reimbursed in a timely manner for one claim (1.0 percent error ratio). This matter could result in a violation of the provisions of [NCGS 58-63-15\(11\)](#) if the occurrence is of such frequency as to be considered a general business practice. The remaining reimbursements were deemed to be correct and were issued on an average of one calendar day from the date the Company collected the monies.

Total Loss Settlement Claims

One hundred total loss settlement claims were randomly selected for review from a population of 30,798. The claim files were reviewed to determine if the settlements were equitable and timely.

The Company primarily used CCC Information Services, Inc. in addition to on-site independent adjusters to establish the actual cash value of totaled vehicles. All settlements were deemed equitable. The Company settled all claims in a timely manner. The payments were issued on a 3-year average of 22 calendar days. No violations of the provisions of [NCGS 58-63-15\(11\)\(h\)](#), [11 NCAC 4.0418](#), or [11 NCAC 4.0421](#) were noted during this review.

Litigated Claims

*13 Fifty litigated claims were selected for review from a population of 2,221. The claim files were reviewed to determine if the Company had engaged in any unfair claims practices. The review of litigated claims disclosed no violations of the provisions of [NCGS 58-63-15](#).

SUMMARY

The Market Conduct examination revealed the following:

1. Marketing

- a. The Company was deemed to be in violation of the provisions of [NCGS 58-63-55](#) as the homeowners consent to rate form was not filed with and approved by the Commissioner.
- b. The Company was deemed to be in violation of the provisions of [NCGS 58-39-55](#) as the homeowners AUD notice had not been filed with and approved by the Commissioner.
- c. The Company was deemed to be in violation of the provisions of [NCGS 58-36-30\(a\)](#) and Rule A2 of the Homeowners Policy Program Manual as an installment waiver deviation for electronic funds transfer was not filed with and approved by the Commissioner.
- d. The Company was deemed to be in violation of the provisions of [NCGS 58-36-30\(a\)](#), Rule A2 of the Homeowners Policy Program Manual, and Rule 22 of the Personal Auto Manual as an installment waiver deviation for account billed policies was not filed with and approved by the Commissioner.
- e. The Company was reminded of the provisions of [NCGS 58-33-56\(b\)](#) as it failed to notify the Department of the termination within 30 days for 8.0 percent of the terminated producers reviewed.
- f. The Company was reminded of the provisions of [NCGS 58-33-56\(d\)](#) as it failed to notify the producer within 15 days of notification to the Department for 6.0 percent of the terminated producers reviewed.
- g. The Company was reminded of the provisions of [11 NCAC 19.0102\(a\)](#), and [19.0106\(a\)\(3\)](#) as the notification of termination letter was not included in the file for 4.0 percent of the terminated producers reviewed.

2. Underwriting Practices

- a. The Company was reminded of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0104](#), and [19.0106\(a\)\(4\)](#) as 6.0 percent of the active homeowners files reviewed did not contain proper file documentation.
- b. The Company was reminded of the provisions of [NCGS 58-36-30\(a\)](#) as 4.0 percent of the active homeowners policies reviewed were rated incorrectly.
- c. The Company was reminded of the provisions of [NCGS 58-41-50\(f\)](#) as 6.0 percent of the active businessowners policies reviewed were rated incorrectly.

3. Terminations

- a. The Company was reminded of the provisions of [NCGS 58-36-30\(a\)](#) and Rule 10 of the North Carolina Personal Automobile Manual as 1.0 percent of the cancelled private passenger automobile policies reviewed were cancelled using an incorrect cancellation method.
- b. The Company was reminded of the provisions of [NCGS 58-36-85\(b\)](#) as it did not send a written termination notice for 8.0 percent of the cancelled private passenger automobile files reviewed for which there was no written request from the insured to terminate the policy.

*14 c. The Company was deemed to be in violation of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4) as it was unable to provide documentation to support the North Carolina Notice of Termination form submitted to the Division of Motor Vehicles for 15.0 percent of the cancelled private passenger automobile files reviewed.

d. The Company was reminded of the policy provisions as 1.0 percent of the cancelled homeowners files reviewed were not cancelled on the date requested by the insured.

e. The Company was deemed to be in violation of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4) as it was unable to provide documentation to support cancellation for 15.0 percent of the cancelled homeowners files reviewed.

f. The Company was reminded of the provisions of Rule 11 of the Commercial Automobile Manual as 2.0 percent of the cancelled commercial automobile policies reviewed were cancelled pro-rata rather than .90 percent of the pro-rata unearned premium when the policy was cancelled per the insured's request.

g. The Company was reminded of the policy provisions as 1.0 percent of the cancelled commercial automobile files reviewed were cancelled on the renewal date in lieu of the date requested by the insured.

h. The Company was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4) as it was unable to provide documentation to support the refund issued to the insured for 1.0 percent of the cancelled commercial automobile policies reviewed.

i. The Company was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4) as it was unable to provide documentation to support cancellation for 5.0 percent of the cancelled commercial automobile files reviewed.

j. The Company was deemed to be in violation of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4) as it was unable to provide documentation to support the North Carolina Notice of Termination form sent to the Division of Motor Vehicles for 100 percent of the cancelled commercial automobile files reviewed.

k. The Company was reminded of the provisions of Rule 11 of the Businessowners Manual as 7.0 percent of the cancelled businessowners files reviewed were cancelled pro-rata rather than .90 percent of the pro-rata unearned premium when the policy was cancelled at the request of the insured.

l. The Company was reminded of the provisions of NCGS 58-41-15(b) as the notice of cancellation was not sent at least 15 days before the effective date of cancellation for 1.0 percent of the cancelled businessowners files reviewed.

m. The Company was deemed to be in violation of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4) as it was unable to provide documentation to support cancellation for 12.0 percent of the cancelled businessowners files reviewed.

n. The Company was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4) as it was unable to provide proof of mailing for 1.0 percent of the cancelled businessowners files reviewed.

*15 o. The Company was deemed to be in violation of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4) as it was unable to provide documentation to support nonrenewal for 34.4 percent of the nonrenewed private passenger automobile files reviewed.

p. The Company was reminded of the policy provisions as the notice of nonrenewal was not sent at least 30 days prior to the termination date for 5.0 percent of the nonrenewed homeowners files reviewed.

q. The Company was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4) as it was unable to provide the nonrenewal notice for 1.0 percent of the nonrenewed homeowners files reviewed.

r. The Company was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4) as it was unable to provide the nonrenewal notice for 4.0 percent of the nonrenewed commercial automobile files reviewed.

s. The Company was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4) as it was unable to provide the proof of mailing for 2.0 percent of the nonrenewed commercial automobile files reviewed.

t. The Company was deemed to be in violation of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4) as it was unable to provide documentation to support the North Carolina Notice of Termination form was sent to the Division of Motor Vehicles for 100 percent of the nonrenewed commercial automobile files reviewed.

u. The Company was reminded of the provisions of NCGS 58-41-20(c) as the nonrenewal notice for 6.0 percent of the nonrenewed businessowner files reviewed was not sent at least 45 days prior to the nonrenewal date.

v. The Company was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4) as it was unable to provide the nonrenewal notice for 2.0 percent of the nonrenewed businessowner files reviewed.

CONCLUSION

An examination has been conducted on the market conduct affairs of Nationwide Mutual Insurance Company for the period January 1, 2008, through December 31, 2011, with analyses of certain operations of the Company being conducted through March 26, 2014.

This examination was conducted in accordance with the North Carolina Department of Insurance and the National Association of Insurance Commissioners Market Regulation Handbook procedures, including analyses of Company operations in the areas of policyholder treatment, marketing, underwriting practices, terminations, and claims practices.

In addition to the undersigned, Gina Abate, North Carolina Market Conduct Examiner, and Bill George, CPCU, AIS, North Carolina Market Conduct Assistant Chief Property & Casualty Examiner, participated in this examination.

Respectfully submitted,
/s/ James P. McQuillan
James P. McQuillan, CPCU, AIT
Examiner-In-Charge
Market Regulation Division
State of North Carolina

I have reviewed this examination report and it meets the provisions for such reports prescribed by this Division and the North Carolina Department of Insurance.

*16 /s/ Tracy M. Biehn
Tracy M. Biehn, LPCS, MBA
Deputy Commissioner
Market Regulation Division
State of North Carolina

2013 WL 6921724

State of North Carolina

*1 Report on Market Conduct Examination

Builders Mutual Insurance Company

Builders Premier Insurance Company

Raleigh, North Carolina

October 3, 2013

MARKET CONDUCT REPORTS

North Carolina Department of Insurance

 Image 1 within document in PDF format.

Report

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Raleigh, North Carolina
October 3, 2013
Honorable Wayne Goodwin
Commissioner of Insurance
Department of Insurance
State of North Carolina
Dobbs Building
430 N. Salisbury Street
Raleigh, North Carolina 27603
Honorable Commissioner:

Pursuant to your instructions and in accordance with the provisions of [North Carolina General Statute \(NCGS\) 58-2-131](#) through [58-2-134](#), a general examination has been made of the market conduct activities of

Builders Mutual Insurance Company (NAIC #10844)

***2 Builders Premier Insurance Company (NAIC #13036)**

NAIC Exam Tracking System Exam Number: NC299-M28

Raleigh, North Carolina

hereinafter generally referred to as the Companies, located at the North Carolina Department of Insurance (Department) office located at 11 S. Boylan Avenue, Raleigh, North Carolina. A report thereon is respectfully submitted.

FOREWORD

This examination reflects the North Carolina insurance activities of Builders Mutual Insurance Company and Builders Premier Insurance Company. The examination is, in general, a report by exception. Therefore, much of the material reviewed will not be contained in this written report, as reference to any practices, procedures, or files that manifested no concerns were omitted.

SCOPE OF EXAMINATION

This examination commenced on June 3, 2013, and covered the period of January 1, 2008, through December 31, 2012, with analyses of certain operations of the Companies being conducted through September 23, 2013. All comments made in this report reflect conditions observed during the period of the examination.

The examination was arranged and conducted by the Department. It was made in accordance with Market Regulation standards established by the Department and procedures established by the National Association of Insurance Commissioners (NAIC) and accordingly included tests of policyholder treatment, marketing, underwriting practices, terminations, and claims practices.

It is the Department's practice to cite companies in violation of a statute or rule when the results of a sample show errors/noncompliance at or above the following levels: 0 percent for consumer complaints, sales and advertising, producers who were not appointed and/or licensed, and the use of forms and rates/rules that were neither filed with nor approved by the Department; 7 percent for claims; and 10 percent for all other areas reviewed. When errors are detected in a sample, but the error rate is below the applicable threshold for citing a violation, the Department issues a reminder to the company.

EXECUTIVE SUMMARY

This market conduct examination revealed concerns with Company procedures and practices in the following areas:

Consumer Complaints – NAIC company code was not included on Company response.

Appointment and Termination of Producers - failure to perform background checks on appointed producers, notification of termination sent in excess of the 15-day requirement, and incomplete file documentation.

Underwriting Practices – Commercial General Liability: use of unfiled new business application and applications accepted from producers who were not appointed. Workers' Compensation: use of unfiled new business application, applications accepted from producers who were not appointed, files did not contain a copy of the schedule rating worksheet, and incorrect rate used to calculate the terrorism premium. Commercial Automobile: applications accepted from producers who were not appointed and rating errors.

***3 Terminations** – Commercial General Liability cancellations: proof of mailing was not provided. Workers' Compensation cancellations: proof of mailing was not provided. Commercial Automobile cancellations: incomplete file documentation. Commercial General Liability nonrenewals: notice did not state the specific reason for termination. Workers' Compensation nonrenewals: notice did not state the specific reason for termination and proof of mailing was not provided.

Claims – Total Loss: incomplete file documentation.

Specific violations related to each area of concern are noted in the appropriate section of this report. All North Carolina General Statutes and rules of the North Carolina Administrative Code cited in this report may be viewed on the North Carolina Department of Insurance Web site www.ncdoi.com by clicking “INSURANCE DIVISIONS” then “Legislative Services”.

This examination identified various non-compliant practices, some of which may extend to other jurisdictions. The Companies are directed to take immediate corrective action to demonstrate their ability and intention to conduct business in North Carolina according to its insurance laws and regulations. When applicable, corrective action for other jurisdictions should be addressed.

All unacceptable or non-compliant practices may not have been discovered or noted in this report. Failure to identify improper or non-compliant business practices in North Carolina or in other jurisdictions does not constitute acceptance of such

practices. Examination report findings that do not reference specific insurance laws, regulations, or bulletins are presented to improve the Companies' practices and ensure consumer protection.

COMPANY OVERVIEW

History and Profile

The North Carolina Home Builders Self Insurers Fund, Inc. (NCHBSIF) was first formed as a business trust in 1984 to meet the workers' compensation insurance needs of the members of the North Carolina Home Builders Association. It was converted to a North Carolina nonprofit corporation on January 1, 1995. The NCHBSIF merged into a mutual insurance company effective January 1, 1998, and changed the name to Builders Mutual Insurance Company (BMIC). All assets and liabilities were transferred on that date.

The Company was incorporated on September 4, 1997. The conversion to a mutual insurance company was approved by the North Carolina Department of Insurance effective October 28, 1997. Effective January 1, 1998, the company was authorized to transact business in North Carolina for fire, extended property coverage, personal injury liability, property damage liability, workers' compensation, and inland marine coverage. Effective April 15, 1999, authorization was expanded to include 19 additional lines of business.

In June 2000, the Company submitted license applications to the insurance departments in South Carolina, Tennessee, and Virginia and began writing business in those states in 2001. More recently, the Company sought admission in the neighboring jurisdictions of Georgia, Maryland, the District of Columbia, and Mississippi. BMIC received an approved Georgia license on September 30, 2008, and began writing business there in January, 2009. Licenses were approved for the District of Columbia and Mississippi on December 1, 2008, and in Maryland on March 12, 2009. The Company sought admission in the state of Florida, and its Certificate of Authority in Florida was approved on July 27, 2011.

*4 In 2007, BMIC established Builders Premier Insurance Company (BPIC) which is positioned as a preferred risk company to work in unison with BMIC.

Company Operations and Management

The Companies primarily write commercial lines insurance coverages. The Companies are licensed in the District of Columbia, Florida, Georgia, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia.

Direct written premium for the Companies' 2012 countrywide property and casualty operations was \$164,421,985. North Carolina's production for the same period was \$94,311,866. Premiums written in North Carolina between 2008 and 2012 decreased approximately 5.9 percent. The charts below outline the Companies' mix of business for selected lines in 2012 and loss ratios in North Carolina for the examination period.

Line of Business	Written Premium	Percentage
Workers' Compensation	\$67,788,530	71.9
Commercial Multiple Peril	\$14,735,092	15.6
Commercial Automobile	\$ 5,994,591	6.3
Products Liability	\$ 3,637,451	3.9

Other		\$ 2,156,202		2.3
Total		\$94,311,866		100.0

Year	Written Premium	Earned Premium	Incurred Losses	Loss Ratio
2008	\$100,221,242	\$101,798,270	\$ 29,895,173	29.4
2009	\$ 65,904,701	\$ 68,795,224	\$ 19,974,045	29.0
2010	\$ 68,990,397	\$ 67,400,029	\$ 34,292,881	50.9
2011	\$ 80,361,319	\$ 76,583,832	\$ 39,654,853	51.8
2012	\$ 94,311,866	\$ 91,162,099	\$ 43,422,590	47.6

Certificates of Authority

The Certificates of Authority issued to the Companies were reviewed for the period under examination. These certificates were reviewed to determine compliance with the provisions of [NCGS 58-7-15](#). The Companies' writings in North Carolina were deemed to be in compliance with the authority granted.

Disaster Recovery Procedures

The Companies have developed a business recovery plan to ensure swift recovery of its business in the event of a disaster by utilizing widely available commercial products, which they would be able to purchase from any source and restore from backup tapes to get their systems back online. The Companies are also developing additional plans to expand their current disaster recovery capabilities to include hot-site functionality (recovery at an alternate location).

All media that contains policy information, images or data is stored on enterprise class SAS (Serial Attached Storage) hard drives, which may be stored on individual servers or SAN's. All paper records that are received in the mail or through various other transportation methods are scanned directly into their ImageRight system and stored on their SAN's for an indefinite amount of time. The procedures for backing up the windows servers are as followed:

- ***5 • File Servers** – Selected files are backed up incrementally every night (Monday – Thursday) to disks on a backup server. On Friday evening, a full backup is performed for all of the same files as the incremental backup job. This backup is stored on the disks of the backup server and a duplicate job is run to copy the full back-up series onto LTO-4 tapes. These tapes are transported to a safety deposit box and kept for one month. The month end tapes are stored indefinitely off-site at the same safety deposit box location at the bank.

- **Database Servers** – Full back ups to LTO-4 tapes of selected databases are taken Monday – Friday with the prior week's tapes stored in a fire proof safe in the server room. Month End is the actual last day of the month and those LTO-4 tapes are placed in the safety deposit box at the bank and kept there indefinitely.

- **ImageRight Device** – The images directory is backed up incrementally every night Monday – Friday to the disks on the backup server. A month end job is run on the 21st of every month. That job backs up all files on the images drive to LTO-5 tapes which are stored in the Service Desk indefinitely.

POLICYHOLDER TREATMENT

Consumer Complaints

The Companies' complaint handling procedures were reviewed to determine compliance with applicable North Carolina statutes and rules.

The Companies' complaint register was reconciled with a listing provided by the Consumer Services Division of the Department. The Companies' complaint register was in compliance with provisions of Title 11 of the North Carolina Administrative Code, (NCAC), Chapter 19, Section 0103. All complaints from the Department's listing of 31 were selected for review. The distribution of complaints requiring a response to the Department is shown in the chart below.

Type of Complaint	Total
Claims	17
Underwriting	12
Administrative	2
Total	31

The Companies' response to each complaint was deemed to be appropriate to the circumstances. One complaint was responded to in excess of seven calendar days; however, an extension was requested and granted for the complaint. The Companies were deemed to be in violation of the provisions of [11 NCAC 4.0123](#) as four responses to Departmental inquiries (12.9 percent error ratio) did not contain the Company's NAIC company code.

The average service time to respond to a Departmental complaint was three calendar days. A chart of the Companies' response time follows:

Service Days	Number of Files	Percentage of Total
1 - 7	30	96.8
8 - 14	1	3.2
Total	31	100.0

MARKETING

Policy Forms and Filings

*6 Policy forms and filings for the Companies were reviewed to determine compliance with appropriate North Carolina statutes and rules. The review was based on the following lines of business:

1. Commercial General Liability
2. Workers' Compensation

3. Commercial Automobile

Filings for the workers' compensation line of business were made by the North Carolina Rate Bureau on behalf of the Companies. Filings for the commercial automobile and commercial general liability lines of business were made by the Insurance Services Office on behalf of the Companies. The Companies filed deviations with the Department for these lines of business

Sales and Advertising

The Companies' sales and advertising practices were reviewed to determine compliance with the provisions of [NCGS 58-63-15](#).

The Companies utilize Independent producers, and as such do not review their agency advertising materials. The Companies have a Co-op program, where producers can receive funds to share qualifying advertising expenses which must be pre-approved. The form is maintained in the marketing department and shared with all territory managers. There are also pre-approved flyers and brochures on the Companies' website for producers to download and use for prospecting new clients.

The examiners reviewed advertisements, bulletins, and brochures that are provided for promotional use. The Companies also maintain an internet website: www.buildersmutual.com. The website provides background information relative to their operations, as well as products and services offered.

No unfair or deceptive trade practices were noted in this segment of the examination.

Social Media

BMIC is actively involved on Facebook and YouTube and uses social media to promote local community involvement, safety resources, and free-value added resources like Builders University classes.

The Companies' Social Media Acceptable-Use Policy is designed to outline the guidelines BMIC will use to determine what appropriate online conduct is and to avoid the misuse of social media. Two employees in the marketing department monitor all activity on Facebook.

Producer Licensing

The Companies' procedures for appointment and termination of their producers were reviewed to determine compliance with the appropriate North Carolina statutes and rules. Fifty appointed and 50 terminated producer files were randomly selected for review from populations of 3,266 and 1,054, respectively.

All appointment forms reviewed were submitted to the Department in accordance with the timetables stipulated under the provisions of [NCGS 58-33-40](#). The Companies were deemed to be in violation of the provisions of [11 NCAC 6A.0412\(2\)](#) as background checks were not performed on seven of the appointed producers reviewed (14.0 percent error ratio).

The Companies were deemed to be in violation of the provisions of [NCGS 58-33-56\(d\)](#) as notification of termination was sent in excess of the 15-day requirement for 31 of the terminated producers reviewed (62.0 percent error ratio). The Companies were deemed to be in violation of the provisions of [11 NCAC 19.0102\(a\)](#) and [19.0106\(a\)\(3\)\(g\)](#) as nine terminated producer files reviewed (18.0 percent error ratio) did not contain proper file documentation. The missing documentation consisted of:

*7 • Seven files did not contain a copy of the termination letter to the producer.

- Two files did not contain confirmation of the producer termination.

Agency Management

The marketing effort in North Carolina is under the direction of the Director of Marketing and the AVP of Business Development, located at the home office in Raleigh, North Carolina. The Companies have 362 active agencies with approximately 2,239 producers appointed in North Carolina as well as three territory managers that work with the producers. The AVP of Business Development and the three territory managers are responsible for the activities of the agency force in North Carolina. The Agency Relations Department processes all appointments, terminations, and licensing information, and reports to the Director of Marketing.

UNDERWRITING PRACTICES

Overview

The Companies' marketing philosophy in North Carolina is directed to commercial lines of coverage. The Companies provided the examiners with listings of the following types of active policies for the period under examination:

1. Commercial General Liability
2. Workers' Compensation
3. Commercial Automobile

A random selection of 200 policies was made from a population of 12,695. Each policy was reviewed for adherence to underwriting guidelines, file documentation, and premium determination. Additionally, the policies were examined to determine compliance with the appropriate North Carolina statutes and rules, policy provisions, and the applicable policy manual rules.

Commercial General Liability

The Companies provided a listing of 4,413 active commercial general liability policies issued during the period under examination. Fifty policies were randomly selected for review.

The Companies' commercial general liability coverages were written utilizing manual and deviated rates. Policies were written on an annual basis. Risk placement was determined by the Companies' underwriting guidelines and the underwriter. No discrepancies were noted in the Companies' use of their underwriting guidelines. All policy files contained sufficient documentation to support the Companies' classification of the risk.

The Companies were deemed to be in violation of the provisions of [NCGS 58-41-50\(a\)](#) and [11 NCAC 10.1201\(c\)](#) as the new business application used for ten policies reviewed (20.0 percent error ratio) was not filed with and approved by the Department.

The Companies were deemed to be in violation of the provisions of [NCGS 58-33-26](#) and [58-33-40](#) as the producer was not properly appointed by the Company for one of the active files reviewed (2.0 percent error ratio).

The Companies were reminded of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0104](#), and [19.0106\(a\)\(4\)\(g\)](#) as two files reviewed (4.0 percent error ratio) did not contain a copy of the schedule rating worksheet.

*8 The Companies were reminded of the provisions of [NCGS 58-41-50\(f\)](#) as three policies reviewed (6.0 percent error ratio) were rated with the incorrect loss cost multiplier.

The rating errors resulted in three premium undercharges to the insureds. The remaining premiums charged were deemed correct.

Workers' Compensation

The Companies provided a listing of 7,459 active workers' compensation policies issued during the period under examination. One hundred policies were randomly selected for review.

The Companies' workers' compensation coverages were written utilizing manual and deviated rates. Policies were written on an annual basis. Risk placement was determined by the Companies' underwriting guidelines and the underwriter. No discrepancies were noted in the Companies' use of their underwriting guidelines. All policy files contained sufficient documentation to support the Companies' classification of the risk.

The Companies were deemed to be in violation of the provisions of [NCGS 58-3-150](#) and [11 NCAC 10.1201\(c\)](#) as the new business application used for 28 policies reviewed (28.0 percent error ratio) was not filed with and approved by the Department.

The Companies were deemed to be in violation of the provisions of [NCGS 58-33-26](#) and [58-33-40](#) as the producers were not properly appointed by the Company for 11 of the active files reviewed (11.0 percent error ratio).

The Companies were deemed to be in violation of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0104](#), and [19.0106\(a\)\(4\)\(g\)](#) as 14 files reviewed (14.0 percent error ratio) did not contain a copy of the schedule rating worksheet.

The Companies were deemed to be in violation of the provisions of [NCGS 58-36-100](#) as an incorrect rate was used to calculate the terrorism premium on 26 policies reviewed (26.0 percent error ratio).

The errors resulted in premium undercharges to the insureds. The remaining premiums charged were deemed correct.

Commercial Automobile

The Companies provided a listing of 823 active commercial automobile policies issued during the period under examination. Fifty policies were randomly selected for review.

The Companies' commercial automobile coverages were written utilizing manual and deviated rates. Policies were written on an annual basis. Risk placement was determined by the Companies' underwriting guidelines and the underwriter. No discrepancies were noted in the Companies' use of their underwriting guidelines.

The Companies were deemed to be in violation of the provisions of [NCGS 58-33-26](#) and [58-33-40](#) as the producers were not properly appointed by the Company for two of the active files reviewed (4.0 percent error ratio).

The Companies were reminded of the provisions of [11 NCAC 19.0102\(a\)](#) and [19.0106\(a\)\(3\)\(g\)](#) as they were unable to provide the individual producer information for one file reviewed (2.0 percent error ratio).

The Companies were deemed to be in violation of the provisions of [NCGS 58-41-50\(f\)](#) as six policies reviewed (12.0 percent error ratio) were rated incorrectly. The rating errors consisted of the following:

- *9 • Four policies were rated with an incorrect territory.
- Fleet rates were applied in error to one policy reviewed.
- An incorrect territory was used to rate Drive Other Car Coverage on one policy reviewed.

The rating errors resulted in two premium overcharges and four premium undercharges to the insureds. At the request of the examiners, refunds in the amount of \$117.00 were issued by the Companies for the overcharges. The remaining premiums charged were deemed correct.

TERMINATIONS

Overview

The Companies' termination procedures were reviewed to determine compliance with the appropriate North Carolina statutes and rules, policy provisions, and the applicable policy manual rules. The review was based on the following lines of business:

1. Commercial General Liability
2. Workers' Compensation
3. Commercial Automobile

Special attention was placed on the validity and reason for termination, timeliness in issuance of the termination notice, policy refund (where applicable), and documentation of the policy file. A total of 9,364 policies were terminated during the period under examination. The examiners randomly selected 300 terminations for review.

Commercial General Liability Cancellations

Fifty cancelled commercial general liability policies were randomly selected for review from a population of 3,923.

The reason for cancellation was deemed valid for all policies reviewed. The review revealed the following reasons for cancellation:

Reason for Cancellation	Number of Policies	Percentage
Nonpayment of premium	36	72.0
Insured's request	10	20.0
Underwriting reasons	3	6.0
Rewritten	1	2.0
Total	50	100.0

The Companies were not required to issue cancellation notices for 11 of the cancellations reviewed as these policies were cancelled at the request of the insured or coverage was rewritten. Cancellation notices for the remaining 39 policies stated the specific reason for cancellation.

The Companies were reminded of the provisions of [NCGS 58-41-50\(f\)](#) and Rule 11 of the Commercial Lines Manual as the return premium was calculated incorrectly for one policy reviewed (2.0 percent error ratio). The error resulted in an overstatement of refund to the insured. The remaining premium refunds were deemed correct. The Companies issued the refunds in a timely manner.

The final area of this review encompassed documentation of the policy file. The Companies were deemed to be in violation of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0104](#), and [19.0106\(a\)\(4\)\(g\)](#) as 12 files reviewed (24.0 percent error ratio) did not contain proof of mailing of the cancellation notice. The remaining files reviewed contained sufficient documentation to support the action taken by the Companies.

Workers' Compensation Cancellations

***10** Fifty cancelled workers' compensation policies were randomly selected for review from a population of 4,464.

The reason for cancellation was deemed valid for all policies reviewed. The review revealed the following reasons for cancellation:

Reason for Cancellation	Number of Policies	Percentage
Nonpayment of premium	35	70.0
Insured's request	10	20.0
Underwriting reasons	4	8.0
Rewritten	1	2.0
Total	50	100.0

The Companies were not required to issue cancellation notices for 11 of the cancellations reviewed as these policies were cancelled at the request of the insured or coverage was rewritten. Cancellation notices for the remaining 39 policies stated the specific reason for cancellation. The Companies were reminded of the provisions of [NCGS 58-36-105\(b\)](#) as the notice of cancellation was not sent at least 15 days prior to the termination date for three policies reviewed (6.0 percent error ratio).

The Companies were reminded of the provisions of [NCGS 58-36-100](#) and Rule 3 of the National Council on Compensation Insurance Manual as the return premium was calculated incorrectly for one policy reviewed (2.0 percent error ratio). The error resulted in overstatement of refund to the insured. The remaining premium refunds were deemed correct. The Companies issued the refunds in a timely manner.

The final area of this review encompassed documentation of the policy file. The Companies were deemed to be in violation of the provisions of [NCGS 58-36-105\(b\)](#) as eight files reviewed (16.0 percent error ratio) did not contain proof of mailing of the cancellation notice. The remaining files reviewed contained sufficient documentation to support the action taken by the Companies.

Commercial Automobile Cancellations

Fifty cancelled commercial automobile policies were randomly selected for review from a population of 637.

The reason for cancellation was deemed valid for all policies reviewed. The review revealed the following reasons for cancellation:

Reason for Cancellation	Number of Policies	Percentage
Nonpayment of premium	29	58.0
Insured's request	15	30.0
Underwriting Reasons	5	10.0
Rewritten	1	2.0
Total	50	100.0

The Companies were not required to issue cancellation notices for 16 of the cancellations reviewed as these policies were cancelled at the request of the insured or coverage was rewritten. The Companies were reminded of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0104](#), and [19.0106\(a\)\(4\)\(g\)](#) as two files reviewed (4.0 percent error ratio) did not contain a copy of the cancellation notice. Cancellation notices for the remaining 32 policies stated the specific reason for cancellation.

The Companies were reminded of the provisions of [NCGS 58-41-50\(f\)](#) and Rule 11 of the Commercial Automobile Manual as the return premium was calculated incorrectly for two policies reviewed (4.0 percent error ratio). The errors resulted in overstatement of refund to the insureds. The remaining premium refunds were deemed correct. The Companies issued the refunds in a timely manner.

***11** The Companies were reminded of the provisions of [NCGS 20-309.2](#) as the North Carolina Notice of Termination form (FS-4) was not submitted to the Division of Motor Vehicles (DMV) when liability coverage was cancelled on four policies reviewed (8.0 percent error ratio). The Companies were reminded of the provisions of [NCGS 20-309.2\(b\)](#) as the FS-4 was submitted to the DMV in excess of the required 20 days when liability coverage was cancelled on one file reviewed (2.0 percent error ratio).

The final area of this review encompassed documentation of the policy file. The Companies were deemed to be in violation of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0104](#), and [19.0106\(a\)\(4\)\(g\)](#) as 16 files reviewed (32.0 percent error ratio) did not contain proof of mailing of the cancellation notice. The remaining files reviewed contained sufficient documentation to support the action taken by the Companies.

Commercial General Liability Nonrenewals

Fifty nonrenewed commercial general liability policies were randomly selected for review from a population of 77.

The reason for nonrenewal was deemed valid for all policies reviewed. The review revealed the following reasons for nonrenewal:

Reason for Nonrenewal	Number of Policies	Percentage
-----------------------	--------------------	------------

Underwriting reasons	44	88.0
Agent no longer represents company	6	12.0
Total	50	100.0

The Companies were deemed to be in violation of the provisions of [NCGS 58-41-20\(e\)](#) as the notice of nonrenewal did not state the specific reason for termination for five policies reviewed (10.0 percent error ratio). The Companies were reminded of the provisions of [NCGS 58-41-20\(b\)](#) as the notice of nonrenewal was not sent at least 45 days prior to the termination date for two policies reviewed (4.0 percent error ratio).

The final area of this review encompassed documentation of the policy file. The Companies were reminded of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0104](#), and [19.0106\(a\)\(4\)\(g\)](#) as four files reviewed (8.0 percent error ratio) did not contain proof of mailing of the nonrenewal notice. The remaining files reviewed contained sufficient documentation to support the action taken by the Companies.

Workers' Compensation Nonrenewals

Fifty nonrenewed workers' compensation policies were randomly selected for review from a population of 171.

The reason for nonrenewal was deemed valid for all policies reviewed. The review revealed the following reasons for nonrenewal:

Reason for Nonrenewal	Number of Policies	Percentage
Underwriting reasons	45	90.0
Producer no longer represents company	5	10.0
Total	50	100.0

The Companies were deemed to be in violation of the provisions of [NCGS 58-36-110\(e\)](#) as the notice of nonrenewal did not state the specific reason for termination for six policies reviewed (12.0 percent error ratio). The Companies were reminded of the provisions of [NCGS 58-36-110\(b\)](#) as the notice of nonrenewal was not sent at least 45 days prior to the termination date for two policies reviewed (4.0 percent error ratio).

*12 The final area of this review encompassed documentation of the policy file. The Companies were deemed to be in violation of the provisions of [NCGS 58-36-110\(g\)](#) as 17 files reviewed (34.0 percent error ratio) did not contain proof of mailing of the nonrenewal notice.

The remaining files reviewed contained sufficient documentation to support the action taken by the Companies.

Commercial Automobile Nonrenewals

Fifty nonrenewed commercial automobile policies were randomly selected for review from a population of 92.

The Companies were reminded of the provisions of [NCGS 58-41-20\(e\)](#) as the notice of nonrenewal did not state the specific reason for termination for three policies reviewed (6.0 percent error ratio). The review revealed the following reasons for nonrenewal:

Reason for Nonrenewal	Number of Policies	Percentage
Underwriting reasons	47	94.0
No reason stated	3	6.0
Total	50	100.0

The nonrenewal notices for the remaining 47 policies reviewed stated the specific reason for nonrenewal. The Companies were reminded of the provisions of [NCGS 58-41-20\(b\)](#) as the notice of nonrenewal was not sent at least 45 days prior to the termination date for four policies reviewed (8.0 percent error ratio).

The Companies were reminded of the provisions of [NCGS 20-309.2](#) as the FS-4 was not submitted to the DMV when liability coverage was nonrenewed for two policies reviewed (4.0 percent error ratio).

The final area of this review encompassed documentation of the policy file. The Companies were reminded of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0104](#), and [19.0106\(a\)\(4\)\(g\)](#) as four files reviewed (8.0 percent error ratio) did not contain proof of mailing of the nonrenewal notice. The remaining files reviewed contained sufficient documentation to support the action taken by the Companies.

CLAIMS PRACTICES

Overview

The Companies' claims practices were reviewed to determine compliance with the appropriate North Carolina statutes and rules and policy provisions. The review encompassed paid, automobile medical payment, first and third party bodily injury, closed without payment, subrogated, total loss settlement, and litigated claims.

Claims are handled by a Third Party Administrator, Aegis Administrative Services. Aegis employees are located in the Companies' home office in Raleigh, North Carolina and are under the direction of the Claim Manager. The staff is comprised of the Claim Manager, two Supervisors, eight Adjusters, and two Clerical Personnel. Company adjusters provide the claim service with some assistance, at times, from independent adjusters. Independent adjusters have no check or draft authority. The Companies' agency force does not adjust any claims and does not have claims draft authority. With regard to total losses, a salvage log is maintained and managed by the claim supervisor.

***13** Three hundred thirty-nine claims were randomly selected for review from a population of 2,208.

Paid Claims

The examiners randomly selected 100 of the 1,718 first party automobile physical damage and third party property damage claims paid during the period under examination. The claim files were reviewed for timeliness of payment, supporting documentation, and accuracy of payment.

The following types of claims were reviewed and the average payment time is noted in calendar days:

Type of Claim	Payment Time
Automobile physical damage	11.5
Third party property damage	14.0

All payments issued by the Companies were deemed to be accurate. Deductibles were correctly applied and depreciation taken was reasonable.

All claim files reviewed contained documentation to support the Companies' payments. The documentation consisted of appraisals, estimates, repair bills, or inventory listings. The review of paid claims disclosed no violations of the provisions of NCGS 58-63-15(11).

Automobile Medical Payment Claims

All medical payment claims were selected for review from a population of 13. The claim files were reviewed to determine if the Companies had engaged in any unfair claims practices. The review of the medical payment claims disclosed no violations of the provisions of NCGS 58-63-15(11).

First and Third Party Bodily Injury Claims

Fifty first and third party bodily injury claims were randomly selected for review from a population of 127. The claim files were reviewed to determine whether the Companies had engaged in any unfair claims practices. The review of the first and third party bodily injury claims disclosed no violations of the provisions of NCGS 58-63-15(11).

Closed Without Payment Claims

Fifty closed without payment claims were randomly selected for review from a population of 140. The claim files were reviewed to determine if the Companies' reasons for closing the claims without payment were valid.

The claim files reviewed contained documentation that supported the Companies' reasons for closing the claims without payment. All reasons for denial or closing the files without payment were deemed valid. The Companies were reminded of the provisions of 11 NCAC 19.0102(a), 19.0105, and 19.0106(a)(5)(g) as the file documentation was incomplete for one file reviewed (2.0 percent error ratio).

Claims were denied on an average of nine calendar days for the 5-year period. The review of closed without payment claims disclosed no violations of the provisions of NCGS 58-63-15(11).

Subrogated Claims

All subrogated claims were selected for review from a population of 26. The claim files were reviewed to determine if the insured's deductible was properly reimbursed by the Companies when subrogation was successful.

*14 The insured's deductible was not reimbursed in a timely manner for one claim reviewed (3.8 percent error ratio). The insured's deductible was not reimbursed for one claim (3.8 percent error ratio) reviewed. These matters could result in a violation of the provisions of [NCGS 58-63-15\(11\)](#) if the occurrence is of such frequency as to be considered a general business practice. At the request of the examiners, the Companies issued a check in the amount of \$500.00 to the insured for the deductible. The remaining reimbursements were deemed to be correct and were issued on a 5-year average of five calendar days from the date the Companies collected monies.

Total Loss Settlement Claims

Fifty total loss settlement claims were randomly selected for review from a population of 57. The claim files were reviewed to determine if the settlements were equitable and timely.

The Companies primarily used CCC Information Services, Inc. in addition to on-site independent adjusters to establish the actual cash value of totaled vehicles. All settlements were deemed equitable. The Companies were deemed to be in violation of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0105](#), and [19.0106\(a\)\(5\)\(g\)](#) as the file documentation was incomplete for six files reviewed (12.0 percent error ratio).

The Companies settled all claims in a timely manner. The payments were issued on a 5-year average of 19 calendar days. No violations of the provisions of [NCGS 58-63-15\(11\)](#), [11 NCAC 4.0418](#) or [4.0421](#) were noted during this review.

Litigated Claims

Fifty litigated claims were randomly selected for review from a population of 127. The claim files were reviewed to determine if the Companies had engaged in any unfair claims practices.

The Companies were reminded of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0105](#), and [19.0106\(a\)\(5\)\(g\)](#) as the file documentation was incomplete for two files reviewed (4.0 percent error ratio).

The review of litigated claims disclosed no violations of the provisions of [NCGS 58-63-15\(11\)](#).

SUMMARY

The Market Conduct examination revealed the following:

1. Policyholder Treatment

a. The Companies were deemed to be in violation of the provisions of [11 NCAC 4.0123](#) as 12.9 percent of the responses to a Departmental inquiry did not include their NAIC company code.

2. Marketing

a. The Companies were deemed to be in violation of the provisions of [11 NCAC 6A.0412\(2\)](#) as background checks were not performed on 14.0 percent of the appointed producers reviewed.

b. The Companies were deemed to be in violation of the provisions of [NCGS 58-33-56\(d\)](#) as notification of termination was sent in excess of the 15-day requirement for 62.0 percent of the terminated producers reviewed.

c. The Companies were deemed to be in violation of the provisions of 11 NCAC 19.0102(a) and 19.0106(a)(3)(g) as 18.0 percent of the terminated producer files reviewed did not contain proper file documentation.

3. Underwriting Practices

*15 a. The Companies were deemed to be in violation of the provisions of NCGS 58-41-50(a) and 11 NCAC 10.1201(c) as the new business application used for 20.0 percent of the active commercial general liability policies reviewed had not been filed with and approved by the Department.

b. The Companies were deemed to be in violation of the provisions of NCGS 58-33-26 and 58-33-40 as the producer was not properly appointed by the Company for 2.0 percent of the active commercial general liability files reviewed.

c. The Companies were reminded of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(g) as 4.0 percent of the active commercial general liability files reviewed did not contain a copy of the schedule rating worksheet.

d. The Companies were reminded of the provisions of NCGS 58-41-50(f) as 6.0 percent of the active commercial general liability policies reviewed were rated incorrectly.

e. The Companies were deemed to be in violation of the provisions of NCGS 58-3-150 and 11 NCAC 10.1201(c) as the new business application used for 28.0 percent of the active workers' compensation policies reviewed had not been filed with and approved by the Department.

f. The Companies were deemed to be in violation of the provisions of NCGS 58-33-26 and 58-33-40 as the producers were not properly appointed by the Company for 11.0 percent of the active workers' compensation files reviewed.

g. The Companies were deemed to be in violation of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(g) as 14.0 percent of the active workers' compensation files reviewed did not contain a copy of the schedule rating worksheet.

h. The Companies were deemed to be in violation of the provisions of NCGS 58-36-100 as an incorrect rate was used to calculate the terrorism premium on 26.0 percent of the active workers' compensation policies reviewed.

i. The Companies were deemed to be in violation of the provisions of NCGS 58-33-26 and 58-33-40 as the producers were not properly appointed by the Company for 4.0 percent of the active commercial automobile files reviewed.

j. The Companies were reminded of the provisions of 11 NCAC 19.0102(a) and 19.0106(a)(3)(g) as they were unable to provide the individual producer information for 2.0 percent of the active commercial automobile files reviewed.

k. The Companies were deemed to be in violation of the provisions of NCGS 58-41-50(f) as 12.0 percent of the active commercial automobile policies reviewed were rated incorrectly.

4. Terminations

a. The Companies were reminded of the provisions of NCGS 58-41-50(f) and Rule 11 of the Commercial Lines Manual as the return premium was calculated incorrectly for 2.0 percent of the cancelled commercial general liability policies reviewed.

b. The Companies were deemed to be in violation of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(g) as 24.0 percent of the cancelled commercial general liability files reviewed did not contain proof of mailing of the cancellation notice.

*16 c. The Companies were reminded of the provisions of [NCGS 58-36-105\(b\)](#) as the notice of cancellation was not sent at least 15 days prior to the termination date for 6.0 percent of the cancelled workers' compensation policies reviewed.

d. The Companies were reminded of the provisions of [NCGS 58-36-100](#) and Rule 3 of the National Council on Compensation Insurance Manual as the return premium was calculated incorrectly for 2.0 percent of the cancelled workers' compensation policies reviewed.

e. The Companies were deemed to be in violation of the provisions of [NCGS 58-36-105\(b\)](#) as 16.0 percent of the cancelled workers' compensation files reviewed did not contain proof of mailing of the cancellation notice.

f. The Companies were reminded of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0104](#), and [19.0106\(a\)\(4\)\(g\)](#) as 4.0 percent of the cancelled commercial automobile files reviewed did not contain a copy of the cancellation notice.

g. The Companies were reminded of the provisions of [NCGS 58-41-50\(f\)](#) and Rule 11 of the Commercial Automobile Manual as the return premium was calculated incorrectly for 4.0 percent of the cancelled commercial automobile policies reviewed.

h. The Companies were reminded of the provisions of [NCGS 20-309.2](#) as the North Carolina Notice of Termination form was not submitted to the North Carolina Division of Motor Vehicles when liability coverage was cancelled for 8.0 percent of the cancelled commercial automobile files reviewed.

i. The Companies were reminded of the provisions of [NCGS 20-309.2\(b\)](#) as the North Carolina Notice of Termination form was submitted to the North Carolina Division of Motor Vehicles in excess of the required 20 days when liability coverage was cancelled for 2.0 percent of the cancelled commercial automobile policies reviewed.

j. The Companies were deemed to be in violation of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0104](#), and [19.0106\(a\)\(4\)\(g\)](#) as 32.0 percent of the cancelled commercial automobile files reviewed did not contain proof of mailing of the cancellation notice.

k. The Companies were deemed to be in violation of the provisions of [NCGS 58-41-20\(e\)](#) as the notice of nonrenewal did not state the specific reason for termination for 10.0 percent of the nonrenewed commercial general liability policies reviewed.

l. The Companies were reminded of the provisions of [NCGS 58-41-20\(b\)](#) as the notice of nonrenewal was not sent at least 45 days prior to the termination date for 4.0 percent of the nonrenewed commercial general liability policies reviewed.

m. The Companies were reminded of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0104](#), and [19.0106\(a\)\(4\)\(g\)](#) as 8.0 percent of the nonrenewed commercial general liability files reviewed did not contain proof of mailing of the nonrenewal notice.

n. The Companies were deemed to be in violation of the provisions of [NCGS 58-36-110\(e\)](#) as the notice of nonrenewal did not state the specific reason for termination for 12.0 percent of the nonrenewed workers' compensation policies reviewed.

*17 o. The Companies were reminded of the provisions of [NCGS 58-36-110\(b\)](#) as the notice of nonrenewal was not sent at least 45 days prior to the termination date for 4.0 percent of the nonrenewed workers' compensation policies reviewed.

p. The Companies were deemed to be in violation of the provisions of [NCGS 58-36-110\(g\)](#) as 34.0 percent of the nonrenewed workers' compensation files reviewed did not contain proof of mailing of the nonrenewal notice.

q. The Companies were reminded of the provisions of [NCGS 58-41-20\(e\)](#) as the notice of nonrenewal did not state the specific reason for termination for 6.0 percent of the nonrenewed commercial automobile files reviewed.

r. The Companies were reminded of the provisions of [NCGS 58-41-20\(b\)](#) as the notice of nonrenewal was not sent at least 45 days prior to the termination date for 8.0 percent of the nonrenewed commercial automobile policies reviewed.

s. The Companies were reminded of the provisions of [NCGS 20-309.2](#) as the North Carolina Notice of Termination form was not submitted to the North Carolina Division of Motor Vehicles when liability coverage was terminated for 4.0 percent of the nonrenewed commercial automobile policies reviewed.

t. The Companies were reminded of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0104](#), and [19.0106\(a\)\(4\)\(g\)](#) as 8.0 percent of the nonrenewed commercial automobile files reviewed did not contain proof of mailing of the nonrenewal notice.

5. Claims Practices

a. The Companies were reminded of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0105](#), and [19.0106\(a\)\(5\)\(g\)](#) as the file documentation was incomplete for 2.0 percent of the closed without payment claim files reviewed.

b. The Companies were deemed to be in violation of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0105](#), and [19.0106\(a\)\(5\)\(g\)](#) as the file documentation was incomplete for 12.0 percent of the total loss claim files reviewed.

c. The Companies were reminded of the provisions of [11 NCAC 19.0102\(a\)](#), [19.0105](#), and [19.0106\(a\)\(5\)\(g\)](#) as the file documentation was incomplete for 4.0 percent of the litigated claim files reviewed.

TABLE OF STATUTES AND RULES

<u>Statute/Rule</u>	<u>Title</u>
NCGS 58-2-131	Examinations to be made; authority, scope, scheduling, and conduct of examinations.
NCGS 58-2-132	Examination reports.
NCGS 58-2-133	Conflict of interest; cost of examinations; immunity from liability.
NCGS 58-2-134	Cost of certain examinations.
NCGS 58-3-150	Forms to be approved by the Commissioner.
NCGS 58-7-15	Kinds of insurance authorized.
NCGS 58-33-26	General license requirements.
NCGS 58-33-40	Appointment of producers.
NCGS 58-33-56	Notification to Commissioner of termination.
NCGS 58-36-100	Prospective loss costs filings and final rate filings for workers' compensation and employers' liability insurance.
NCGS 58-36-105	Certain workers' compensation insurance policy cancellations prohibited.
NCGS 58-36-110	Notice of nonrenewal, premium rate increase, or change in workers' compensation insurance coverage required.

NCGS 58-41-20	Notice of nonrenewal, premium rate increase, or change in coverage required.
NCGS 58-41-50	Policy form and rate filings; punitive damages; data required to support filings.
NCGS 58-63-15	Unfair methods of competition and unfair or deceptive acts or practices defined.
NCGS 20-309.2	Insurer shall notify Division of actions on insurance policies.
11 NCAC 4.0123	Use of Specific Company Name in Responses.
11 NCAC 4.0418	Total Losses on Motor Vehicles.
11 NCAC 4.0421	Handling of Loss and Claim Payments.
11 NCAC 6A.0412	Appointment of Agent: Responsibility of Company.
11 NCAC 10.1201	General Requirements.
11 NCAC 19.0102	Maintenance of Records.
11 NCAC 19.0103	Complaint Records.
11 NCAC 19.0104	Policy Records.
11 NCAC 19.0105	Claim Records.
11 NCAC 19.0106	Records Required for Examination.

CONCLUSION

***18** An examination has been conducted on the market conduct affairs of Builders Mutual Insurance Company and Builders Premier Insurance Company for the period January 1, 2008, through December 31, 2012, with analyses of certain operations of the Companies being conducted through September 23, 2013.

This examination was conducted in accordance with the North Carolina Department of Insurance and the National Association of Insurance Commissioners Market Regulation Handbook procedures, including analyses of Company operations in the areas of policyholder treatment, marketing, underwriting practices, terminations, and claims practices.

In addition to the undersigned, Kelvin A. Owens and Sharon O'Quinn, North Carolina Market Conduct Examiners, participated in this examination.

Respectfully submitted,
/s/ Norma M. Rafter
Norma M. Rafter, CPCU
Examiner-In-Charge
Market Regulation Division
State of North Carolina

I have reviewed this examination report and it meets the provisions for such reports prescribed by this Division and the North Carolina Department of Insurance.

/s/ Tracy M. Biehn
Tracy M. Biehn, LPCS, MBA
Deputy Commissioner
Market Regulation Division
State of North Carolina

End of Document

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CERTIFICATION OF AUTHENTICITY

I, Bill George, do hereby certify that the attached pages from the Market Regulations Division's files concerning:

- A. *Report On Market Conduct Examination State Farm Mutual Automobile Insurance Company State Farm Fire and Casualty Company
Bloomington, Illinois, May 2, 2014*
- B. *Report On Market Conduct Examination Nationwide Mutual Insurance Company Columbus, Ohio, April 2, 2014;*
- C. *Report On Market Conduct Examination Builders Mutual Insurance Company Builders Premier Insurance Company Raleigh, North Carolina, October 3, 2013;*
- D. *Report On Market Conduct Examination Peak Property and Casualty Insurance Corporation Stevens Point, Wisconsin, September 13, 2013;*
- E. *Report On Market Conduct Examination the Members Insurance Company Charlotte, North Carolina, January 28, 2013;*
- F. *Report On Market Conduct Examination of the USAA Casualty Insurance Company San Antonio, Texas, January 14, 2011;*
- G. *Report On Market Conduct Examination of the Allstate Property and Casualty Insurance Company Northbrook, Illinois, July 25, 2011;*
- H. *Report On Market Conduct Examination of the Titan Indemnity Company San Antonio, Texas, April 14, 2011;*
- I. *Report On Market Conduct Examination of the Victoria Fire & Casualty Company Mayfield Heights, Ohio, April 14, 2011;*
- J. *Report On Market Conduct Examination of the Discovery Insurance Company Kinston, North Carolina, February 19, 2010;*
- K. *Report On Market Conduct Examination of the Geico Indemnity Company Government Employees Insurance Company Chevy Chase, Maryland, January 26, 2010;*

L. *Report On Market Conduct Examination of the Selective Insurance Company of the Southeast Branchville, New Jersey, February 14, 2008.*

are true and accurate copies of records maintained by the North Carolina Department of Insurance in the course of its official regulatory activities.

Bill George

Bill George, CPCU, AIS, MCM
Assistant Chief Examiner
North Carolina Department of Insurance

STATE OF NORTH CAROLINA

COUNTY OF WAKE

Sworn to and subscribed before me this the 27th day of July, 2021.

Bill George

Notary Public *Dijade B. Muhavi*

My commission expires: 9/28/22



1 UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
3 Civil Action No. 1:19-cv-00294-CCE-JLW

4 ELIZABETH V. FORTSON,)

5 Plaintiff,)

6 vs.)

7 GARRISON PROPERTY AND CASUALTY)
8 INSURANCE COMPANY,)

9 Defendant.)
10)
11)

12 Videotaped Remote Deposition of
13 DR. LANCE DARSHANA KAUFMAN
14 (Taken by Defendant)
15 Corvallis, Oregon
16 Tuesday, August 24, 2021
17
18
19
20
21
22
23

24 Reported in Stenotype by
25 Lauren M. McIntee, RPR, CRR
Transcript produced by computer-aided transcription

1 APPEARANCES

2 ON BEHALF OF THE PLAINTIFF:

3 Tory Beardsley, Esquire (via Zoom)
4 Hagens Berman Sobol Shapiro, LLP
5 11 West Jefferson Street, Suite 1000
6 Phoenix, Arizona 85003
7 (602) 840-5900
8 Toryb@hbsslaw.com

9 ON BEHALF OF THE DEFENDANT:

10 Rodger L. Eckelberry, Esquire (via Zoom)
11 Mathew Drocton, Esquire (via Zoom)
12 Baker Hostetler, LLP
13 200 Civic Center Drive, Suite 2200
14 Columbus, Ohio 43215
15 (614) 462-5189
16 Reckelberry@bakerlaw.com
17 Mdrocton@bakerlaw.com

18 ALSO PRESENT:

19 Michael Kirby, Videographer (via Zoom)

20 VIDEOTAPED REMOTE DEPOSITION OF DR. LANCE DARSHANA
21 KAUFMAN, a witness called on behalf of Defendant, before
22 Lauren M. McIntee, Registered Professional Reporter,
23 Certified Realtime Reporter, and Notary Public, in and
24 for the State of North Carolina, in Corvallis, Oregon,
25 on Tuesday, August 24, 2021, commencing at 7:33 a.m. PST

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By Mr. Eckelberry..... Page 4

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Exhibit 6	Sample Claim Activity Log (Garrison P&C 00039938 to 39958)	158
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1 Q. The insurance industry.

2 A. For which -- no.

3 Q. Are you familiar with any North Carolina
4 statutes or regulations that set forth any degree of
5 itemization that is required?

6 MS. BEARDSLEY: Objection, scope.

7 A. The -- the rules that I reviewed and that I
8 mentioned earlier do have a component of itemization in
9 them, but it doesn't provide detail or specificity.

10 BY MR. ECKELBERRY:

11 Q. So you are not aware of any statute or
12 regulation that provides a level of detail or
13 specificity required for itemization in total loss
14 valuations, correct?

15 MS. BEARDSLEY: Same objection.

16 A. Can you say that question again?

17 MR. ECKELBERRY: Madam Court Reporter, would
18 you read it back, please?

19 (Whereupon, the following question was read:

20 So you are not aware of any statute or
21 regulation that provides a level of detail or
22 specificity required for itemization in total loss
23 valuations, correct?)

24 A. That's correct.

25 BY MR. ECKELBERRY:

1 into account when determining value?

2 A. Well, as I mentioned before, I would defer
3 legal conclusions about statutes to attorneys or other
4 statute experts.

5 Q. Okay.

6 A. This specific statute that you're referring
7 to became effective October 1, 2020, which is pretty
8 short section of the time period that we're looking at.

9 Q. Okay.

10 A. The Item B states, "If the insurance company
11 and the claimants are unable to make an agreement," then
12 there's a process that follows. And that suggests to me
13 that D is not applicable to cases where the insurance
14 company and the claimant do reach an agreement as to the
15 cash value.

16 Q. Okay.

17 A. And so that kind of renders the Subsection D
18 irrelevant to -- to the claims that were reviewed.

19 Q. Okay. So under Subsection D, as you say, if
20 the insurance company and the claimant are able to reach
21 an agreement, then there's no particular valuation
22 method required, right?

23 MS. BEARDSLEY: Foundation, scope.

24 A. Well, as I said, I'm not an -- not an expert.
25 And I would expect that there are methodologies that

Page 1

1 UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
3 Civil Action No. 1:19-cv-00294-CCE-JLW
4

5 ELIZABETH V. FORTSON,)

)

)

6 Plaintiff,)

)

7 v.)

)

8 GARRISON PROPERTY AND)

9 CASUALTY INSURANCE COMPANY,)

)

10 Defendant.)

11
12
13 Zoom Video Deposition of WILLIAM BERGLUND
14 (Taken by the Defendant)
15 Oak Brook, Illinois
16 Thursday, September 2, 2021
17
18
19
20

21 Reported by: Marisa Munoz-Vourakis -
RMR, CRR and Notary Public
22
23
24
25

1 APPEARANCE OF COUNSEL BY ZOOM:

2 For the Plaintiff:

3 JOHN M. DeSTEFANO, ESQ.

4 Hagens Berman Sobol Shapiro LLP

5 11 West Jefferson Street, Suite 1000

6 Phoenix, AZ 85003

7 602-840-5900

8 johnd@hbsslaw.com

9
10 For the Defendant:

11 KEVIN P. ZIMMERMAN, ESQ.

12 Baker & Hostetler LLP

13 200 Civic Center Drive, Suite 2200

14 Columbus, OH 43215

15 kzimmerman@bakerlaw.com

16
17 Also Present: MICHAEL KIRBY, Videographer

18 oOo

19
20 Zoom Video Deposition of WILLIAM BERGLUND,
21 taken by the Defendant, at Oak Brook, Illinois, on the 2nd
22 day of September, 2021 at 10:07 a.m. (Eastern Standard
23 Time), before Marisa Munoz-Vourakis, Registered Merit
24 Reporter, Certified Realtime Reporter and Notary Public.
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I N D E X

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WILLIAM BERGLUND

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ZIMMERMAN

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1 A. My opinions are articulated in the report,
2 and I stand by the report.

3 Q. Fair enough. Let's go down to paragraph
4 six then, please. Do you see there that you say: The
5 CCC valuation report listed four different comparable
6 vehicles applying negative uniform condition
7 adjustments of \$722 to each of the four comparable
8 vehicles without itemizing or explaining the basis of
9 the adjustment. Do you see that?

10 A. I do.

11 Q. Okay. In your kind of understanding, what
12 do you understand the basis for the condition
13 adjustment to be?

14 A. I have no idea, because it's not, you know,
15 indicated in the CCC report. From my recollection, the
16 adjuster did not, you know -- the Garrison adjuster did
17 not know what the basis for the adjustments were.

18 Q. Do you have an understanding of what the
19 basis for the condition adjustment was?

20 A. Do I?

21 Q. Yes.

22 A. No, I do not.

23 Q. Do you have an understanding of why CCC
24 applied a condition adjustment?

25 A. I can see why they would want to make the

1 vehicles comparable, but they didn't explain how they
2 arrived at their numbers.

3 Q. So I guess separating the number from the
4 actual kind of use of a condition adjustment generally,
5 do you understand why CCC used a condition adjustment
6 generally?

7 A. Yes.

8 Q. And why is that?

9 A. To try to put all the vehicles on the same
10 platform.

11 Q. Can you explain what you mean by put the
12 vehicles on the same platform?

13 A. So you can adjust vehicles such that they
14 come out with the same valuation across the platform of
15 the comparable vehicles with Ms. Garrison's vehicle --
16 I'm sorry, Ms. Fortson's vehicle.

17 Q. Do you think it was appropriate for CCC to
18 make such an adjustment?

19 A. I don't disagree with the need for them to
20 make the adjustment. I just don't understand how they
21 arrived at the adjustment, and they didn't provide any
22 explanation.

23 Q. Okay. Can you please take out document
24 number four in the list of documents I gave you. It
25 should be Ms. Fortson's CCC report, and this document

1 Q. What specifics would it depend on?

2 A. Well, what the, you know, the variances are
3 among the, you know, vehicles when you're comparing
4 them to the policyholder. Say the policyholder had a
5 vehicle with 75,000 miles, and one of the comparable
6 vehicles had a value of 78,000 miles, is that a
7 sufficient difference to apply any kind of an
8 adjustment? Perhaps not.

9 Q. Okay. So if there were kind of differences
10 between the comparable vehicle and the loss vehicle,
11 condition differences, then it would be appropriate to
12 apply a condition adjustment, right?

13 A. Correct, either up or down, depending on
14 the vehicles themselves.

15 Q. Okay. Okay. So I guess what I'm trying to
16 get at is how did the failure to explain the \$722 harm
17 Mrs. Fortson -- Ms. Fortson?

18 A. Well, she needed transparency of the
19 process. She doesn't know whether or not she's being
20 offered a fair value, since she doesn't understand how
21 they arrived at that value. So I think she's being
22 harmed as a result of that.

23 Q. How was she financially harmed by that?

24 A. By the amount of the condition adjustment
25 being applied without explaining it to her. So she has

1 BY MR. ZIMMERMAN:

2 Q. Let me ask you this, Mr. Berglund, what is
3 your opinion as to whether or not \$722 was the right
4 condition adjustment for Ms. Fortson?

5 MR. DeSTEFANO: Form and foundation.

6 A. I don't know if it's the right condition
7 adjustment, since it was never clearly explained on how
8 they arrived at it. I'm very suspicious and suggest it
9 probably is not, since the exact same condition
10 adjustment was applied to each of the four vehicles
11 which I find extremely difficult to accept.

12 Q. So if each of the four vehicles were
13 individually inspected and conditioned, the appropriate
14 condition adjustment might have been higher, right?

15 A. It could have been higher. It could have
16 been lower. There's no way to tell.

17 Q. There's no way to tell. How would you be
18 able to tell?

19 A. If they had an itemization, you know,
20 identifying how they arrived at the amount of the
21 company adjustment for each of the four vehicles.

22 Q. So you just said it might have been higher,
23 it might have been lower, right?

24 A. Correct.

25 Q. So we don't know for a fact whether

1 Ms. Fortson was paid more or less than she should have
2 been paid, right?

3 MR. DeSTEFANO: Form and foundation.

4 A. That is correct.

5 Q. How would we determine whether Ms. Fortson
6 was paid more or less than she should have been paid?

7 MR. DeSTEFANO: Form and foundation.

8 A. Again, I'm answering the same question
9 repeatedly. If they would itemize the condition
10 adjustment for each of the four vehicles and indicated
11 how they applied them, then Ms. Fortson could look and
12 make a determination of whether or not she would accept
13 those figures. Without that type of break down, she's
14 got no way of knowing.

15 Q. Okay. Now, in your expert report, you
16 don't mention the options adjustment as being
17 insufficiently itemized, the options adjustment we see
18 on page eight and nine, right?

19 A. I don't believe so. Let me take a look at
20 the option adjustments.

21 Q. Yeah, go ahead.

22 (Pause.)

23 A. Yeah, I don't believe I rendered an opinion
24 on the basis for the option adjustments.

25 Q. Why not?

1 Q. And Mr. Berglund, just to be sure, are you
2 looking at a document at the very top it says
3 201911NCAC4.0418?

4 A. I am.

5 Q. Okay. Have you seen this document before?

6 A. I've looked at thousands of documents in
7 this. I've looked at some state documents. I might
8 have. I can't honestly say.

9 Q. Well, let me --

10 A. It just, it all looks the same.

11 Q. If you turn to page six of your expert
12 report, and you see you quote 11NCAC4.0418. Is this
13 the regulation you're quoting there?

14 A. It's in my report -- this looks like it,
15 assuming this is the one effective until September 30.
16 Is there a date on this?

17 Q. Yeah, so this is the one you can see at the
18 top, it's 201911NCAC. So it's the version that was in
19 effect in 2019.

20 A. Okay.

21 Q. As you mentioned, you cited two different
22 versions of the regulation in your report, right?

23 A. Yeah, there was a change on September 30, I
24 believe, of 2020.

25 Q. Okay. Which version was in effect when

1 Ms. Fortson's total loss claim was adjusted?

2 A. Well, the loss was in 2016, so it would
3 have been the earlier one, which is the one we are
4 looking at right now, I believe.

5 Q. So this is the one that would have governed
6 Ms. Fortson's total loss claim?

7 A. I don't know, it's kind of a legal term, so
8 I stay out of those things. I think this is the one
9 that would have been used at that time, if that's what
10 you're asking.

11 Q. Yes, that is what I was asking.
12 As you mentioned, you're not a lawyer
13 right?

14 A. That is correct.

15 Q. So you're not offering any opinions about
16 the interpretation of this regulation, right?

17 MR. DeSTEFANO: Form.

18 A. No legal interpretation.

19 Q. What do you mean by that?

20 A. Well, I'm not going to give a legal
21 interpretation of any of the provisions within, you
22 know, this. If I was an adjuster that reviewed this, I
23 think an adjuster would look at it from a certain
24 perspective. If I was an attorney, I would look at it
25 from a different perspective.

1 Q. Are you offering any opinions as to whether
2 the regulation was or was not violated by Garrison?

3 A. Well, I don't think they complied with
4 the -- with the, you know, the statute, in a general
5 sense.

6 Q. Is that a legal opinion?

7 A. No, it is not. I do not give legal
8 opinions.

9 Q. Okay. Can you point me to where in this
10 regulation that it uses the word itemize?

11 A. Without doing -- I can do a word search on
12 it, if that's what you want me to do?

13 Q. Go ahead.

14 A. If it's a searchable document.

15 Okay. If this is a searchable document, I
16 don't know whether it is, I typed in itemized and
17 nothing came up.

18 Q. Let me ask it differently.

19 Are you offering an opinion as to whether
20 or not this regulation requires adjustments to
21 comparable vehicles to be itemized?

22 A. Well, again, I'd have to read the entire
23 document over again and refer to what I indicated in my
24 report.

25 Q. Well, go ahead and identify any portions of

1 this regulation that you mention in your report that
2 require the condition adjustments to be itemized.

3 A. I don't know if the word itemized
4 specifically is used. Again, I don't know if this is
5 searchable from a word standpoint.

6 Q. But even if it doesn't use the word
7 itemized, are you opining that this regulation requires
8 an insurer to itemize the condition adjustments?

9 A. Well, I think this is kind of small. I
10 don't know if my eyesight is -- let me increase the
11 value of it.

12 Paragraph two says: Where the insurer has
13 the right to select, to replace the vehicle and does so
14 select a replacement vehicle, shall be available
15 without delay similar to the loss vehicle and paid for
16 by the insured, subject only to the deduction and to
17 the value of any enhancements acceptable to the
18 insured. There's no mention in that paragraph about a
19 condition adjustment, if in fact the vehicle is being
20 replaced.

21 Q. So does paragraph two require an insurer to
22 itemize -- let me ask it differently.

23 Does paragraph two require Garrison to
24 itemize the condition adjustments applied to comparable
25 vehicles?

1 A. Paragraph two makes no reference to even
2 utilizing the condition adjustments.

3 Q. But you told me that you think it's
4 appropriate to apply a condition adjustment, right?

5 A. On a case-by-case basis with regard to the
6 vehicle. From my understanding, some states don't
7 allow you to utilize condition adjustments.

8 Q. That's your understanding of North
9 Carolina?

10 A. My understanding in North Carolina that if
11 you utilize a condition adjustment, it should be
12 itemized.

13 Q. And what is that understanding based on?

14 A. Well, what I just read to you right now.
15 If the insurer has the right to select to replace the
16 vehicle, now this is for vehicle replacement, she'd
17 only apply the deductible and any enhancements to the
18 vehicle. There's no discussion there about a condition
19 adjustment.

20 Q. Was Ms. Fortson's vehicle replaced?

21 A. No, it was not.

22 Q. She was given a cash settlement, right?

23 A. That is correct, based on the replacement
24 cost of the vehicle.

25 Q. So your view is that paragraph two of this

1 regulation is what creates the obligation for Garrison
2 to itemize a condition adjustment?

3 A. Well, paragraph two doesn't even say the
4 condition adjustment should be utilized, if in fact the
5 vehicle is replaced.

6 Q. So is that a yes or a no, that paragraph
7 two creates the obligation for Garrison to itemize the
8 condition adjustment in the CCC reports?

9 A. It doesn't address condition adjustments at
10 all.

11 Q. So it doesn't address the itemization of
12 condition adjustments, does it?

13 A. It doesn't even make a mention that the
14 condition adjustments should be applied.

15 Q. And it doesn't -- oh, go ahead.

16 A. I'm sorry, it just refers to application of
17 the deductible and the value of any enhancements,
18 except for those for the insured that's for replacing
19 the vehicle.

20 Q. Is it your view that this regulation
21 prohibits an insurer from making a condition
22 adjustment?

23 A. No, not necessarily, but it doesn't give
24 them the authority to utilize the condition adjustment.
25 So I'm just thinking from a common sense standpoint if

1 you're going to apply some kind of condition
2 adjustment, you should explain it to the policyholder
3 and give them a detailed explanation for how it's
4 applied. And that would be across each of the
5 individual vehicles that you're utilizing on a
6 comparable basis.

7 Q. Okay. So the common sense basis -- you
8 said there's a common sense reason why Garrison should
9 itemize the condition adjustment, right?

10 A. Within the context of this statute, that
11 would be my opinion.

12 Q. Are there any other portions of this
13 statute that require Garrison to itemize the condition
14 adjustment?

15 A. I'm looking at my report. That's why you
16 see me turning my head.

17 Q. That's fine.

18 A. That is correct.

19 MR. ZIMMERMAN: Okay. Mr. Berglund,
20 can we go off the record for one moment?

21 THE VIDEOGRAPHER: We are off the
22 record at 11:46 a.m.

23 (Recess.)

24 THE VIDEOGRAPHER: We are back on the
25 record at 11:53 a.m.

1 MR. ZIMMERMAN: Thank you. Ms. Munoz,
2 can you please read back the last question
3 and answer, please, before we broke?

4 (Record read.)

5 Q. So Mr. Berglund, when you say that is
6 correct, you mean there are not any other portions of
7 this regulation that require Garrison to itemize the
8 condition adjustment besides subsection two?

9 MR. DeSTEFANO: Objection, foundation.

10 A. Nothing comes to mind.

11 Q. So does your report identify any other
12 portions of this regulation that require Garrison to
13 itemize or explain the condition adjustment?

14 A. Nothing comes to mind.

15 Q. I'm asking about your expert report that
16 you offered here.

17 Did you identify any other portions in your
18 expert report?

19 A. I don't believe so.

20 Q. And can you review your report and tell me?

21 A. Well, I didn't memorize the report, so.

22 It does make a reference on page six under
23 one towards the section that if the claimant represents
24 that a vehicle actually owned by him was in better than
25 average condition, the insurer should give due

1 consideration, compensation, the condition of the
2 insure's vehicle prior to the accident.

3 Q. Does that portion of the regulation require
4 Garrison to itemize or explain the condition adjustment
5 applied to the comparable vehicles?

6 A. It does not.

7 Q. Okay.

8 A. I don't believe there's any other reference
9 to that statute in my report.

10 Q. So you don't offer any opinions as to
11 whether any other portion of the statute requires
12 Garrison to itemize or explain the condition adjustment
13 to comparable vehicles?

14 A. That's correct.

15 MR. ZIMMERMAN: Okay. Could we turn
16 to tab three, which is the next document,
17 please. This will be marked as Berglund
18 Exhibit 5.

19 (The document referred to was marked
20 Defendant's Exhibit Number 5 for
21 identification.)

22 Q. And Mr. Berglund just let me know when you
23 have that, and by tab three, I mean document number
24 three in the list of documents.

25 A. This is 4.18?

1 Q. Correct, sir.

2 A. I think this is probably the revision that
3 was made in 2020 --

4 Q. You're correct about that.

5 A. -- I believe.

6 MR. ZIMMERMAN: Before we get into it,
7 counsel, Mr. DeStefano, do you have that
8 document available?

9 MR. DeSTEFANO: Yes.

10 MR. ZIMMERMAN: Okay. Thank you.

11 Q. So I assume have you seen this document
12 before, Mr. Berglund?

13 A. I have.

14 Q. Okay. And what is this?

15 A. This looks like the revised statute. This
16 is dated April 15, 2020.

17 Q. This is the version that went into effect
18 in October 1, 2020, right?

19 A. Yes, that is correct.

20 Q. Would a regulation of job fit in October 1,
21 2020 apply to total loss settlements made before that
22 date?

23 MR. DeSTEFANO: Form and foundation.

24 A. That would be a -- I'm sorry.

25 The answer is that I'm not an attorney, and

1 that would be a legal conclusion. I can't really
2 address that.

3 Q. So based on your experience adjusting
4 claims, would you apply a regulation adopted October 1,
5 2020 to settlements, total loss settlements before that
6 date?

7 A. I would not.

8 Q. Now, subsection E of this regulation,
9 looking down on it says that: A settlement offer "may
10 be adjusted for condition." Do you see that?

11 A. Just, I have to expand this, because it's
12 so small.

13 Q. Very bottom of the first page.

14 A. I do see that section E, subsection E.

15 Q. So in your view, because of that, is it
16 consistent with the usual and customary practices of
17 North Carolina for settlement offers to be adjusted for
18 the condition of the loss vehicle?

19 A. That would be consistent with the statute.

20 Q. Is it consistent with the usual and
21 customary practices in North Carolina as well?

22 A. I would say yes.

23 Q. Does any portion of this statute require
24 adjustments to comparable vehicles to be itemized or
25 explained?

1 A. Okay. Let me do the same thing that I did
2 with the other one and do a name search or a word
3 search. Hello?

4 Q. Yeah, I'm here.

5 A. I think my ear buds may have gone off.
6 Hold on for a second. My ear buds are dead.

7 Can you hear me directly?

8 Q. I can hear you, yes.

9 MR. ZIMMERMAN: Ms. Munoz, can you
10 hear okay?

11 THE WITNESS: Can everybody hear me?
12 I was using my ear buds.

13 THE VIDEOGRAPHER: Just maybe move
14 your microphone a little more away from you.

15 THE WITNESS: I can turn the volume
16 down.

17 MR. ZIMMERMAN: I think that's better.

18 THE WITNESS: I turned the volume down
19 a little bit, and I will try to speak less
20 loudly.

21 BY MR. ZIMMERMAN:

22 Q. Mr. Berglund, I will reask the question.

23 Does any portion of this regulation require
24 the adjustments to the comparable vehicles, the
25 condition adjustments to comparable vehicles to be

1 explained or itemized?

2 A. I'm reviewing the statute as we're talking.

3 Okay. I'm going to reference subsection M
4 which is similar to what was in the earlier statute
5 regarding the decision to replace the total loss
6 vehicle. And, again, it's subject to only the
7 deductible and the value of any additional options or
8 equipment chosen by the claimant.

9 There's no mention of a condition
10 adjustment in that paragraph.

11 Other than that, I do not see any reference
12 to a condition adjustments, other than what you had
13 identified in paragraph subsection E, that the
14 settlement offer may be adjusted for condition options,
15 equipment, and mileage, plus the cost of the unrepaired
16 portion that preexisted the accident.

17 Q. Now, subsection M we were looking at, that
18 you mentioned, could that apply to the replacement of
19 total loss vehicle, right?

20 A. Kevin, can you turn your speaker up? I can
21 barely hear you.

22 Q. Oh, yeah.

23 THE VIDEOGRAPHER: You're coming
24 through very clear on my end.

25 MR. DeSTEFANO: It's good here, Bill.

1 You might need to adjust volume on your
2 unit.

3 THE VIDEOGRAPHER: You turned your
4 speaker volume down, but that has nothing to
5 do with your microphone. Should we go off
6 the record get this figured?

7 MR. ZIMMERMAN: Sure. Let's go off
8 the record.

9 THE VIDEOGRAPHER: We are off the
10 record at 12:02 p.m.

11 (Recess.)

12 THE VIDEOGRAPHER: We are back on the
13 record at 12:03 p.m.

14 BY MR. ZIMMERMAN:

15 Q. Mr. Berglund, before we broke, we were
16 talking about subsection M of the statute, right?

17 A. Correct, subsection M, and I drew back to
18 subsection E.

19 Q. Now, subsection M relates to an insurer
20 electing to replace a total loss vehicle, right?

21 A. That is correct.

22 Q. Okay. It doesn't refer to cash settlements
23 for total loss vehicles?

24 A. That is correct.

25 Q. Okay. So besides subsection M, can you

1 identify any other part of this regulation that would
2 require Garrison or CCC to itemize or explain the
3 condition adjustments to comparable vehicles?

4 MR. DeSTEFANO: Form and foundation.

5 A. I did not see any other subsection that
6 applies.

7 Q. Okay. Turn back to your report at page
8 five, paragraph six, please.

9 A. Okay. That's the one that starts off on
10 page four?

11 Q. Yeah, yeah, I'm looking at the language on
12 pages six -- page five, but, of course, feel free to
13 review the language on page four.

14 A. Okay.

15 Q. I want to ask you about the sentence that
16 begins at the top of page five there. You say: The
17 application of the condition adjustment was applied
18 regardless of individual differences in the conditions
19 of these vehicles. Do you see that?

20 A. I do.

21 Q. Okay. Can you explain what you mean by
22 that, please?

23 A. Well, the vehicles, they all had different
24 options. They had different mileage. They're in
25 different physical condition. But there's no reference

1 to that when CCC applied the condition adjustment to
2 them.

3 Q. So in your view, there should be a
4 different condition adjustment for each of the
5 comparable vehicles?

6 A. That is correct.

7 Q. Oh, sorry, sir.

8 A. That is my opinion.

9 Q. Okay. And that would be based on the
10 individual condition of each of those vehicles, right?

11 A. Correct.

12 Q. And how would you determine the individual
13 condition of each of those vehicles?

14 MR. DeSTEFANO: Form and foundation?

15 A.the vehicles --

16 Q. By doing what, sir?

17 THE WITNESS: Do you have an
18 objection? I guess not.

19 A. By inspecting each of the vehicles.

20 Q. Okay. Is there any way to determine --

21 MR. DeSTEFANO: Excuse me, can you
22 hear me?

23 MR. ZIMMERMAN: Yeah, I can hear you.

24 MR. DeSTEFANO: I did object. I think
25 the witness said I did not, but we were

1 speaking over each other.

2 MR. ZIMMERMAN: I heard it, yeah.

3 MR. DeSTEFANO: Well, did the court
4 reporter note it? She said okay.

5 BY MR. ZIMMERMAN:

6 Q. So is there any way to determine the
7 appropriate condition adjustment that should be applied
8 to each of the comparable vehicles without inspecting
9 each of those vehicles?

10 A. Well, either inspecting the vehicles or
11 during a visual inspection perhaps, but the vehicles
12 should have been looked at so that individual
13 adjustments could be applied.

14 Q. So there's no other way to determine the
15 appropriate condition adjustment without inspecting
16 each of those vehicles?

17 MR. DeSTEFANO: Form and foundation.

18 A. Not with any certainty.

19 Q. Okay. What do you mean not with any
20 certainty?

21 A. Well, you've got to evaluate the vehicles
22 based on the individual vehicle's characteristics, and
23 if you don't inspect them, I don't know how you can
24 arrive at that.

25 Q. Look at paragraph seven of your report, the

1 A. But the condition adjustment was explained.
2 The condition adjustment was not explained for the four
3 comp. vehicles.

4 Q. Okay. But the adjustment to
5 Ms. Garrison's, just, so it's clear for the record, was
6 a positive adjustment, right, Ms. Fortson's vehicle?

7 A. Yes. I don't recall the number, but it was
8 a positive number.

9 Q. Okay. Okay. Let's look at paragraph six
10 please here. You say: Garrison's application of the
11 negative amounts adjustment to the values of comparable
12 motor vehicles reduces the claim payments made to their
13 policyholders, right?

14 A. Yes.

15 Q. Reduces compared to what?

16 MR. DeSTEFANO: Form and foundation.

17 A. As compared to a baseline.

18 Q. What do you mean by a baseline?

19 MR. DeSTEFANO: Form and foundation.

20 A. The baseline upon which the valuating to
21 the insured vehicle would be. Whatever that number
22 was, you're subtracting \$722 from it.

23 Q. So you're just saying there was a reduction
24 compared to if no condition adjustment was applied?

25 A. That is correct.

1 Q. Okay. But you agree that Garrison can make
2 some adjustments to the condition of a loss vehicle,
3 right?

4 MR. DeSTEFANO: Objection.

5 A. If they explained to the policyholder what
6 the basis for it is, I would agree with that.

7 Q. Okay. So you're not opining that the
8 adjustment kind of reduced the settlement payments
9 compared to what Garrison could have paid, right?

10 MR. DeSTEFANO: Form and foundation.

11 A. Well, I'm saying that they do reduce the
12 payment, because there's an automatic reduction in the
13 potential payment based on this condition adjustment,
14 which is unexplained and in my opinion arbitrary.

15 Q. I understand that. So you're saying -- but
16 we talked about earlier the \$722. You're not opining
17 whether that's too high or too low, right?

18 A. There's no way to determine that, so, yes,
19 I'm not opining, because there's no way to determine
20 it.

21 Q. And in fact, the proper condition
22 adjustment we don't know, it might have been higher,
23 right?

24 MR. DeSTEFANO: Form and foundation.

25 A. It could be higher, or it could be lower.

1 Since we don't know how they arrived at the number,
2 there's no way to tell.

3 Q. So if it was supposed to be higher, then
4 Ms. Garrison actually should have been paid less,
5 right?

6 MR. DeSTEFANO: Form and foundation.

7 A. Yes, but I don't know if there should have
8 been any condition adjustment applied at all, since we
9 don't know the basis for it.

10 Q. Okay. But if it was supposed to be higher,
11 that would mean Ms. Fortson was paid enough, right?

12 MR. DeSTEFANO: Form and foundation.

13 BY MR. ZIMMERMAN:

14 Q. You don't know one way or another?

15 MR. DeSTEFANO: Form and foundation.

16 A. That's speculation. The fact that they
17 applied it across the board puts Ms. Fortson in a hole
18 before they even start evaluating her car.

19 Q. What do you mean by that?

20 A. Well, there's no automatic deduction of
21 \$722 before anything else is done.

22 Q. Okay. So if the appropriate condition
23 adjustment was made, it might have been higher than
24 722? It might have been lower than 722, right?

25 MR. DeSTEFANO: Form and foundation.

1 A. That is correct.

2 Q. Okay. And we don't know, we have no way of
3 determining whether it should be higher or lower than
4 722 without individually inspecting the comparable
5 vehicles, right?

6 MR. DeSTEFANO: Form and foundation.

7 A. CCC would know that, but I could not
8 determine what it was. It was not identified in their
9 report.

10 Q. And the only way for CCC to know that would
11 be to go and inspect the comparable vehicles?

12 MR. DeSTEFANO: Form and foundation.

13 A. That would be a reasonable approach.

14 Q. What other reasonable approaches would
15 there be?

16 MR. DeSTEFANO: Same objection.

17 A. I can't think of any.

18 Q. Okay. So are you opining that any class
19 member was paid more or less than what they should have
20 been paid?

21 MR. DeSTEFANO: Form and foundation.

22 A. I didn't hear the first couple of words you
23 used there, counselor.

24 Q. Apologies. Are you opining whether any
25 class member was paid more or less than the actual cash

1 value of their vehicle?

2 MR. DeSTEFANO: Form and foundation.

3 THE WITNESS: John?

4 MR. DeSTEFANO: I said form and
5 foundation.

6 A. I'm opining on Ms. Fortson's vehicle.

7 Q. Are you opining that Ms. Fortson was paid
8 more -- so to be clear, you're not opining as to other
9 class members' vehicles, right?

10 A. I only --

11 MR. DeSTEFANO: Form and foundation.

12 Excuse me, form and foundation.

13 Bill, just please pause, I'm sorry,
14 but I got to, I got to, I got to speak my
15 objections.

16 A. Okay. I'm opining on what transpired with
17 regard to the claim involving Ms. Fortson.

18 Q. Okay. You're not opining as to whether
19 other class members were paid more or less than the
20 actual cash value of their vehicle?

21 MR. DeSTEFANO: Form and foundation.

22 A. Unless they applied a similar condition
23 adjustment, no, I'm not.

24 Q. What do you mean unless they applied a
25 similar condition adjustment?

1 A. If the same practice of applying a
2 condition adjustment, without explanation, applies to
3 all of the other vehicles in the class, then I don't
4 think they were dealt with fairly either.

5 Q. I guess are you opining that Ms. Fortson
6 was paid more or less than the actual cash value of her
7 vehicle?

8 A. I don't know, since I don't know the
9 amount -- or, I'm sorry, I don't know the basis for the
10 condition adjustment that was applied. So I can't
11 really give an answer to that.

12 Q. So you can't provide an opinion about that,
13 right?

14 A. I cannot provide opinion, other than the
15 fact that they applied a condition adjustment without
16 explaining the basis for it to Ms. Fortson.

17 Q. Okay. Are you providing any opinions as to
18 the proper dollar value, which should have been used as
19 the actual cash value of Ms. Fortson's vehicle?

20 MR. DeSTEFANO: Form and foundation.

21 A. No.

22 Q. Go ahead, Mr. Berglund.

23 A. I already said no. No.

24 Q. So looking at paragraph eight here, you
25 say: Garrison's standard practice is to present the

1 A F T E R N O O N S E S S I O N

2 THE VIDEOGRAPHER: We are back on the
3 record at 1:19 p.m.

4 BY MR. ZIMMERMAN:

5 Q. Thank you, okay, Mr. Berglund, I'm going to
6 take you back to your expert report, Exhibit 1, and
7 we're looking at page eight now. Just let me know when
8 you're there.

9 A. I'm there.

10 Q. So looking at paragraph seven of the
11 report, you quote the North Carolina regulation there
12 that we were looking at earlier, right?

13 A. Yes.

14 Q. And the portion you quoted requires the
15 claimant to represent the vehicle within better than
16 average condition, right?

17 A. Yes.

18 Q. And then it says: If the claimant does
19 that, then it says: The insurer shall give due
20 consideration to the condition of the claimant's
21 vehicle prior to the accident, right?

22 A. Yes.

23 Q. Okay. Is it your opinion that Garrison did
24 not comply with this portion of the regulation?

25 A. Yeah, they did give consideration for an

1 adjustment upward, as I recall.

2 Q. So why did you quote this portion of the
3 regulation?

4 A. It seemed like the right thing to do at the
5 time.

6 Q. Can you tell me what you mean by that?

7 A. No, just pointing out that that section
8 does require that due consideration be given to the
9 policyholder's vehicle.

10 Q. But you're not saying that Garrison didn't
11 comply with this provision?

12 A. No, I'm not.

13 Q. Okay. Do you know how many of Garrison's
14 insureds or claimants represented to Garrison that
15 their vehicle was in better than average condition?

16 A. I didn't see any documentation of that.

17 Q. So you're not offering an opinion as to
18 whether X number of insureds did or X percentage of
19 insureds did?

20 A. No, I have no opinion on that.

21 Q. Okay. Look at paragraph 9, the next
22 paragraph, please. There you say: Garrison's standard
23 practice of utilizing an arbitrary negative condition
24 adjustment is inconsistent with the minimum standards
25 of conduct for the insurance industry, including those

1 up your microphone at all, I don't know if others are
2 having trouble hearing, but if not, I can live.

3 A. I'm sorry. I just got to find out where
4 that control is. That's this. That's this. It might
5 be on my phone. It shouldn't be on my phone.

6 Q. If you're not able to, I'll live.

7 A. Hold on for a second.

8 THE VIDEOGRAPHER: I'm hearing him
9 okay on my end.

10 BY MR. ZIMMERMAN:

11 Q. We'll continue on, Mr. Berglund, that's all
12 right.

13 A. Okay. I'm looking at my controls here,
14 whoops. I don't see a way of turning the volume up. I
15 can knock off the ear buds if you would prefer so I can
16 hear you better.

17 Q. No, that's fine. It's okay. It's okay.
18 We'll power through.

19 So Mr. DeStefano, do you have tab three in
20 front of you? This was Berglund Exhibit 5. This is
21 the regulation that went into effect October 1, 2020,
22 right?

23 A. I have it, yes, that is it.

24 Q. Okay. And so Mr. Berglund, you didn't
25 identify it earlier, but now you're saying there's

1 another verse in this regulation that you identified
2 over the lunch break that requires USAA to explain its
3 condition adjustment, right?

4 A. That is my impression of it, it's
5 subparagraph H.

6 Q. Subparagraph H?

7 A. That's correct.

8 Q. Okay. And my last question asked for USAA,
9 but it should have asked for Garrison. Same
10 subsection?

11 A. I'm sorry, yes.

12 Q. Okay, that's my apologies.

13 So subsection H says: When a motor
14 vehicle's total loss is settled on a basis which
15 deviates from this rule, the deviation must be
16 supported by documentation within the claim file
17 detailing the total loss, motor vehicle's condition,
18 and the reason for the deviation. Do you see that?

19 A. I do.

20 Q. Okay. Is that the portion that you say
21 requires Garrison to itemize or explain the condition
22 adjustment?

23 A. I think further in that same paragraph it
24 says: Any deduction from the actual cash value of the
25 total motor vehicle, including deductions for salvage

1 or prior damage, be itemized and contain the amount of
2 the deduction. The documentation that supports the
3 basis for this settlement shall be shared with the
4 claimant or the policyholder.

5 Q. Okay. So this only applies when the motor
6 vehicle's total loss is settled on a basis which
7 deviates from the other portions of the rule, right?

8 MR. DeSTEFANO: Form and foundation.

9 A. That's what it says.

10 Q. Okay. That's your understanding of how the
11 statute would operate, as with your experience as a
12 claims adjuster?

13 MR. DeSTEFANO: Form and foundation.

14 BY MR. ZIMMERMAN:

15 Q. Sorry. What was your answer, Mr. Berglund?

16 A. Yes.

17 Q. So there has to be some kind of ex-ante
18 deviation from the rule before the requirements of
19 subsection H come into effect?

20 MR. DeSTEFANO: Form and foundation.

21 A. It's a little confusing, because it says:
22 Which deviates from this rule, but then it doesn't
23 really stip -- identify what "this rule is."

24 Q. You don't understand this rule to be this
25 regulation?

1 MR. DeSTEFANO: Form and foundation.

2 A. Well, it says this rule. Then this rule is
3 a number of paragraphs, you know, a number of
4 paragraphs long.

5 Q. Okay. Well, let me ask you this, can you
6 point me to any other paragraph of this regulation that
7 you think Garrison violated while handling total loss
8 claims?

9 A. Let me read the balance of it.

10 Q. Go ahead.

11 A. I got that one, and I looked at and says it
12 doesn't seem to apply to our case in point.

13 (Pause.)

14 A. Well, really the next one, that would be
15 (i) if requested by the claimant, total loss payment by
16 the insurance company shall be accompanied by the
17 written statement listing the estimates, valuations,
18 and any deductions used in calculating payment, and the
19 source of these values.

20 I think that would also be applicable.

21 Q. Okay. And the preface to that one says:
22 If requested by the claimant, right?

23 A. Correct.

24 Q. So for subsection i to be applicable, the
25 claimant has to request, make a request to Garrison,

1 Q. Okay. So subsection i you think is another
2 portion of this regulation that requires Garrison to
3 itemize or explain the condition adjustment?

4 A. Yes. I think this document is really the
5 minimum required of an insurance company who's dealing
6 in good faith.

7 Q. Okay. Now, did Ms. Fortson make a request
8 to Garrison pursuant to subsection i, or that would
9 qualify under subsection i?

10 A. I don't believe so, at least not to my
11 recollection. But, again, that would just be the
12 minimum standard, I think, for dealing in good faith.

13 Q. Okay. So nothing in this -- so subsection
14 i of this regulation would not apply to Ms. Fortson's
15 claim then?

16 MR. DeSTEFANO: Form and foundation.

17 A. Again, it would not, inasmuch as this is a
18 minimum requirement, I think the insurance company
19 should exceed the minimum requirement under the
20 statute.

21 Q. Okay. Is there any other portions you
22 talked about subsection h and subsection i. Are there
23 any other portions of this regulation that you say
24 Garrison violated?

25 A. As you're talking, I'm reading.

1 MR. DeSTEFANO: Form and foundation.

2 A. We discussed paragraph m. I think it looks
3 like it's almost identical wording to the older
4 statute, in that if the insurance company has the right
5 to elect to replace the vehicle, and if they do, the
6 only deductions should be for additional options and
7 equipment. There's no mention of any deduction for a
8 condition adjustment. But, again, that applies to only
9 if they decide to replace the car. Again, this is a
10 minimum standard. I don't see anything else here that
11 would apply, in my opinion.

12 Q. Okay. So subsection m we talked about
13 applies to the replacement of a total loss vehicle,
14 right?

15 A. Correct.

16 Q. Okay. But Ms. Fortson was offered a cash
17 settlement. She wasn't offered a replacement, right?

18 A. That is correct.

19 Q. Okay. And subsection i is premised on if
20 the claimant requests a written statement, right?

21 A. Correct.

22 Q. And Ms. Fortson did not request --

23 MR. DeSTEFANO: Form and foundation.

24 BY MR. ZIMMERMAN:

25 Q. And Ms. Fortson did not request such a

1 written statement, right?

2 A. That is correct.

3 Q. And then subsection h only applies when a
4 motor vehicle's total loss is settled on a basis which
5 deviates from this rule, right?

6 MR. DeSTEFANO: Form and foundation.

7 A. Right.

8 Q. So is there any other portion of this rule
9 that you believe Garrison's settlement of Ms. Fortson's
10 claims deviated from?

11 A. I don't believe so.

12 Q. Okay. Okay. How many other class
13 members -- and I apologize if I asked you this. How
14 many other class members requested a written statement
15 from Garrison?

16 A. I have no idea.

17 Q. Okay. So you don't offer any opinion as to
18 whether a certain percentage of the class did?

19 A. I do not.

20 Q. Okay. How would we know whether any
21 individual class member did or did not make a request
22 to Garrison for a written statement?

23 A. It's outside the scope of my testimony.

24 Q. I mean, what would -- with your experience
25 adjusting claims, what would you have to look at to

1 4.

2 A. Do we need the deposition still?

3 Q. Yeah, we might. You can close out of it
4 for now. Actually, leave it open.

5 A. Page 14, did you say, counselor?

6 Q. Page 14, paragraph 4, please.

7 A. Okay. Okay.

8 Q. So I'm reading from your paragraph 4 here.
9 You mention deducting an amount declared to be a
10 condition adjustment from the values of comparable
11 vehicles without conducting an inspection of those
12 vehicles or relying (in a small fraction of cases) on
13 inspections performed to rate the dealers, not the
14 vehicles. Do you see that?

15 A. Yes.

16 Q. What do you mean by performed to rate the
17 dealers not the vehicles?

18 A. CCC's process is not to look at all
19 dealers, only to look at dealers that reach -- that
20 meet a certain threshold of compliance with them. So
21 they're not looking at all the dealers in general.
22 They're only looking at certain dealers and those
23 dealers --

24 Q. Go ahead, I'm sorry.

25

25

Q. But doesn't that work to the benefit of the

1 insured, if the comparable vehicles are in better
2 condition?

3 A. Not when they use unexplained condition
4 adjustments it isn't.

5 Q. Okay. But the condition adjustment would
6 have to be applied whether or not irrespective of what
7 type of comparable vehicle CCC uses, right?

8 A. It depends on the basis for the condition
9 adjustment, and that we don't know.

21 Q. Okay. Okay. I guess I'm just trying to
22 understand, what do you mean when you say performed to
23 rate the dealers, not the vehicles?

24 A. Well, they're two separate things. One is
25 you're rating a class of dealers that you're going to

1 I think that's placing the insurance company,
2 Garrison's interests, ahead of the interests of the
3 policyholder.

4 Q. But you told me that we don't know for a
5 fact whether the 722 was too high or too low, right?

6 A. That is correct.

7 Q. So how do we know that it was placing
8 Garrison's interests over the insured?

9 MR. DeSTEFANO: Form and foundation.

10 A. The insured accept it as true, even though
11 they didn't know it.

12 Q. But it might have been -- go ahead, I'm
13 sorry.

14 A. It wouldn't matter whether it was higher or
15 lower. The fact that they accepted it without knowing
16 the basis for it and pushed down their policyholder I
17 think is unfair, and I don't think it's dealing in good
18 faith.

19 Q. Okay. Are you offering any opinions about
20 Garrison's motivation for using CCC valuation products?

21 A. I can only assume they're using it to save
22 money, cut down on the cost of claims, but I'm not
23 going to be testifying to that.

24 Q. So you don't have any expert opinion about
25 Garrison's motivations for using the CCC product?

1 A. I'd have to go into their mind. I can't do
2 that.

3 Q. Now, you said you assumed they are doing it
4 to save money though, right?

5 A. That would be apparent to me, based on my
6 observations.

7 Q. That's kind of your lay view of it?

8 A. That is correct, and based on my 50 years
9 of experience handling claims.

10 Q. What's that view based on?

11 A. My 50 years of experience handling claims.

12 Q. I guess what documents, testimony, or
13 evidence is that based on?

14 A. That the insurance companies, accepting as
15 accurate, calculations providing them -- provided to
16 them by CCC, which are not supported by an explanation
17 or documentation, and using those numbers as a
18 settlement platform to deal with their policyholders,
19 which I think is inherently inappropriate, and I do not
20 think it's dealing in good faith.

21 Q. Yeah, but what impact does that have -- I
22 guess how does that relate to USAA's motivation for
23 using CCC?

24 A. I didn't say it did.

25 Q. Oh, okay. That's what I'm asking about.

1 A. I don't know what their motivation is,
2 other than attempting to save money on the cost of
3 claims.

4 Q. And that's what I'm asking about. Why do
5 you think it was Garrison's motivation to use CCC to
6 save money?

7 A. Otherwise why would they use them?

8 Q. Did you see any documents, testimony or
9 evidence supporting your assumption that Garrison used
10 CCC to save money?

11 A. No, I did not.

12 Q. Now, two sentences later, we're still on
13 page 16, paragraph 10, do you see the sentence
14 beginning Garrison assumes that all?

15 A. What starts off by adopting this basic
16 premise, Garrison assumes that all?

17 Q. Right. Right. By adopting this basic
18 premise, yeah, do you see that?

19 A. I do.

20 Q. So it says: By adopting this basic
21 premise, Garrison assumes that all of its insureds'
22 vehicles are in less than good or dealer ready
23 condition, giving Garrison the upper hand when
24 evaluating total loss claim, because assuming this
25 premise, the total value of every car would be reduced

1 regardless of the vehicle's actual condition.

2 Do you see that?

3 A. I do.

4 Q. Now, when you say less than good, I assume
5 you mean less than very good, right?

6 A. It depends on the matrix, and I don't have
7 the matrix in front of me, so I'm not positive on what
8 the individual categories are.

9 Q. You can pull back open document number 8,
10 what we marked as Berglund Exhibit 9?

11 A. Okay, I'm there.

12 Q. And actually if it helps you, sir, I'll
13 point you to footnote 14 of your report, and if you
14 look at that, you'll see the Bates number there is the
15 same Bates number we're looking at here.

16 Do you see that?

17 A. No, but I understand what you're saying. I
18 think you're right.

19 Q. Okay. So do you understand this to be the
20 conditioning matrix, the Garrison conditioning matrix?

21 A. Seeing it, it seems like it is.

22 Q. Okay. So when you say here -- we're back
23 on page 16, paragraph 10, you say: Garrison assumes
24 that all of their insureds' vehicles are in less than
25 good condition. Do you see that?

1 A. I do.

2 Q. Is that supposed to say very good instead
3 of good?

4 A. I think you're right. I think it should be
5 very good.

6 Q. Okay. Now, Garrison inspects every loss
7 vehicle to determine its condition, right, pre-accident
8 condition?

9 A. Yeah, every vehicle that the policyholder
10 or third-party claim adjusts. Let me say, I'm assuming
11 they do. I don't know if they look at every single
12 one. They may have some dealerships they'll accept the
13 dealership's -- not the dealership, the body shop will
14 accept the body shop's valuation, and a Garrison
15 adjuster may not look at them, and that would be
16 standard protocol. They don't necessarily look at
17 every single one by a staff employee.

18 Q. But it's your understanding that Garrison
19 assesses the condition, whether themselves or through
20 an agent, of every loss vehicle, right?

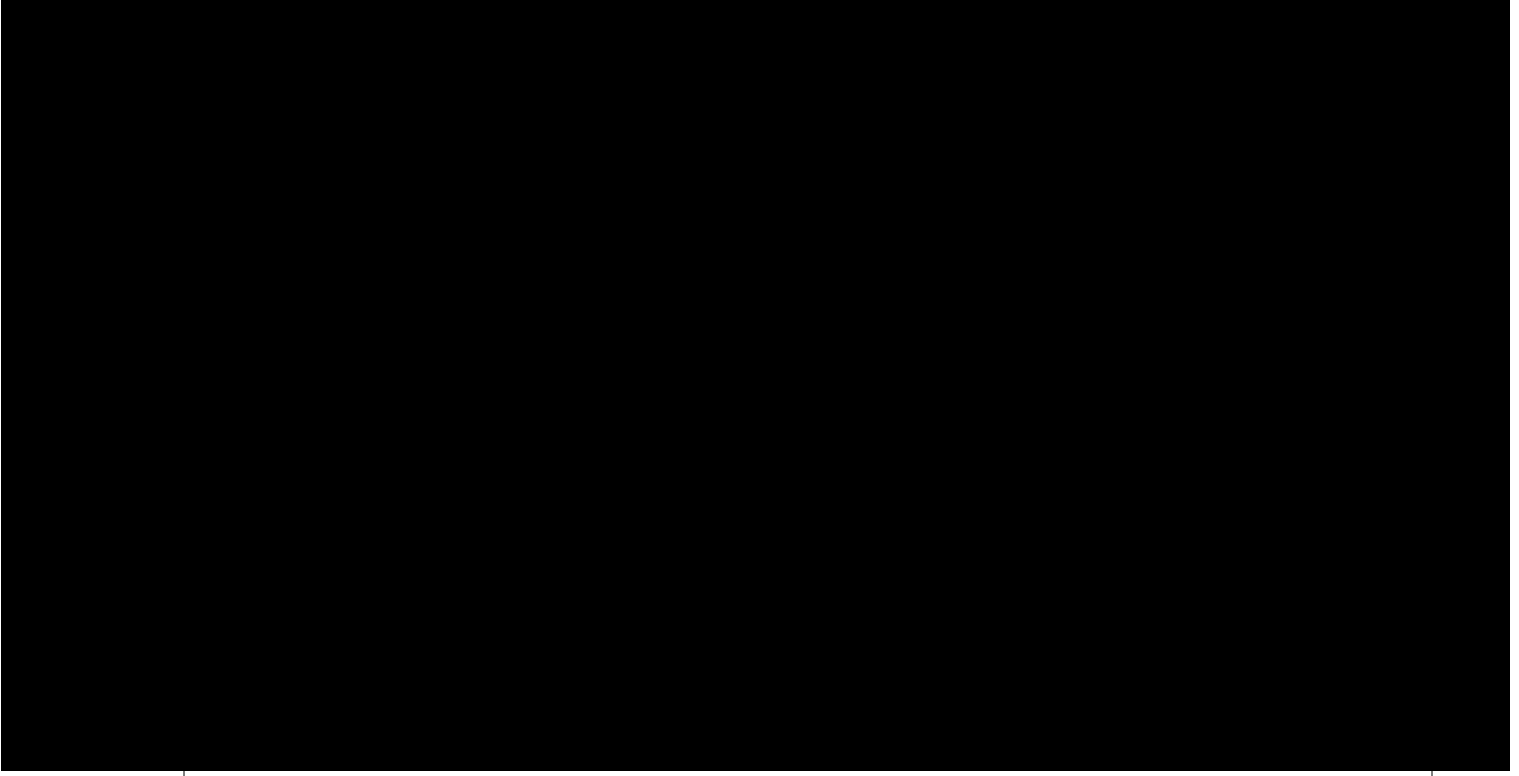
21 A. Correct.

22 Q. All right, that makes sense.

23 So how was Garrison assuming that vehicles
24 are in less than very good condition if it's actually
25 inspecting each and every loss vehicle?

1 A. I don't know if I can answer that. I mean,
2 there are a lot of vehicles on the road that are not in
3 good condition. There are a lot of vehicles on the
4 lots that are not in good condition, but many of those
5 have been excluded from the fold, based on CCC's
6 analysis.

7 Q. What do you mean that many of those have
8 been excluded based on CCC's analysis?



20 Q. Okay. So is the average vehicle in the CCC
21 dealer ready database in better condition than the
22 average vehicle on the road?

23 A. I can't answer that, because I don't know.

24 Q. You don't have any expert opinions on that?

25 A. I don't have an expert opinion. I can

1 legal, and, you know, someone else may disagree with
2 that, right?

3 A. And I disagree, yeah.

4 Q. So I'm asking you did you review any
5 documents where Garrison -- showing that Garrison knew
6 that CCC would not comply with the standard in the
7 industry in North Carolina?

8 A. No, I don't believe I did.

9 Q. Okay. So you didn't review any evidence or
10 testimony or documents showing that Garrison believed
11 it was in violation of industry standards in North
12 Carolina, did you?

13 MR. DeSTEFANO: Form and foundation.

14 A. No, I did not.

15 Q. Okay. Did you ever review any documents,
16 testimony or evidence where Garrison ever recognized
17 the use of CCC reports to be illegal?

18 MR. DeSTEFANO: Form and foundation.

19 A. No.

20 THE WITNESS: John, you have to talk
21 faster.

22 A. No.

23 Q. No was your answer?

24 A. My answer was no.

25 MR. DeSTEFANO: It's hard to keep up

1 foundation.

2 A. I honestly can't say. You know, I'm not
3 certain.

4 MR. DeSTEFANO: Just one moment.

5 (Pause.)

6 MR. DeSTEFANO: That's all I have.

7 FURTHER EXAMINATION BY COUNSEL FOR DEFENDANT

8 BY MR. ZIMMERMAN:

9 Q. Counsel, just a couple of follow up.

10 Now, Mr. Berglund, I'm going to ask you a
11 couple of additional questions, only a couple of
12 minutes, just following off of what Mr. DeStefano just
13 asked of you.

14 A. Yes.

15 Q. Mr. DeStefano can advise you not to answer
16 any portion of this question, but to the extent he
17 doesn't advise you, I want you to kind of tell me
18 everything.

19 Tell me, did you discuss the total loss
20 regulation with Mr. DeStefano during the lunch break?

21 A. We did not discuss the regulation, no. We
22 discussed that there was a regulation, and I mentioned
23 to him that I wanted to look at it.

24 Q. And what did he say in response to that?

25 A. Okay.

1 Q. Did he encourage you to go look at it?

2 A. I would not say he encouraged me, no.

3 Q. What were the words used in response?

4 A. He might have said that might be a good
5 idea.

6 Q. Did you have any other conversations about
7 your testimony during the lunch break with
8 Mr. DeStefano?

9 A. I did not.

10 Q. Just quickly, Mr. DeStefano asked you about
11 whether the post October 2020 version of the regulation
12 had an itemization requirement, right?

13 A. I'm sorry, would you repeat that, please?

14 Q. Just in the set of questions Mr. DeStefano
15 just asked you, he asked you whether the post
16 October 2020 version of the regulation contained an
17 itemization requirement?

18 A. Yes.

19 Q. Okay. And we discussed previously all the
20 portions of the regulation that might contain that
21 requirement?

22 A. We just discussed regulation. We didn't go
23 down paragraph by paragraph. I think you asked me a
24 general question if I had any other provisions that I
25 thought came into play, and I recall answering no, I

1 didn't; but I really didn't read the entire statute at
2 that time.

3 Q. Okay. Go back to tab three then, which is
4 Berglund Exhibit 5, the 2020 version of the regulation.

5 A. Hold on, I've got to size this up.

6 Okay. Number three, I don't know what
7 exhibit number it's identified as.

8 Q. It should be Exhibit number Berglund
9 Exhibit 5, but, yeah, it's number three for your
10 purposes.

11 Now, besides lunch break, did you discuss
12 this regulation with Mr. DeStefano at any other time
13 today?

14 A. No, I did not.

15 Q. Okay. Can you identify what portion of
16 this regulation you say contains an itemization
17 requirement?

18 A. Paragraph H: Any deduction from the actual
19 cash value of the total loss vehicle, including
20 deductions or salvage -- deductions for salvage or
21 prior damage shall be itemized and contain the amount
22 of the deduction. The documentation that supports the
23 basis of the settlement shall be shared with the
24 claimant.

25 Q. Any other portion of this statute besides

1 subparagraph H that contains an itemization
2 requirement?

3 A. No, I have nothing else underlined, so I'm
4 going to say no.

5 Q. When did you do that underlining?

6 A. When I looked at it earlier today.

7 You have to realize when John and I stopped
8 talking, then I came back in here and I opened it up on
9 my computer and looked at it and I underlined it, and I
10 highlight things to refresh my memory.

11 MR. ZIMMERMAN: Okay. Okay. That's
12 all the additional questions that I have.

13 Mr. Berglund, I do want to say thank
14 you for your time today. I appreciate it.
15 I know this can be a long process sometimes.
16 I really appreciate your time today.

17 THE WITNESS: I enjoyed it. It's a
18 pleasure chatting with you.

19 THE VIDEOGRAPHER: Any more questions,
20 counselors? Anything further?

21 MR. DeSTEFANO: No. Thank you.

22 THE VIDEOGRAPHER: This concludes the
23 deposition. We're off the record at
24 5:05 p.m.

25 (Whereupon the deposition was

1 UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
3

4 _____
5 ELIZABETH V. FORTSON,
6 Plaintiffs,

7 v.

Civil Action No.

8 GARRISON PROPERTY AND CASUALTY

1:19-cv-00294-

9 INSURANCE COMPANY,

CCE-JLW

10 Defendant.
11 _____

12 VIDEOTAPED DEPOSITION OF RANDALL MCCATHREN

13 DATE: Tuesday, August 17, 2021

14 TIME: 10:08 a.m.

15 LOCATION: Remote Proceeding

Greensboro, North Carolina 27420

16 REPORTED BY: Joshua Seagondollar, Notary Public

17 JOB No.: 4765452
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A P P E A R A N C E S

ON BEHALF OF PLAINTIFF, ELIZABETH V. FORTSON:

MICHAEL MALONE, ESQUIRE (by videoconference)

Hendren Redwine & Malone PLLC

4600 Marriott Drive, Suite 150

Raleigh, North Carolina 27612

mmalone@hendrenmalone.com

(919) 420-7867

ON BEHALF OF DEFENDANT, GARRISON PROPERTY AND CASUALTY
INSURANCE COMPANY:

KEVIN ZIMMERMAN, ESQUIRE (by videoconference)

Baker Hostetler LLP

200 Civic Center Drive, Suite 1200

Columbus, Ohio 43215

kzimmerman@bakerlaw.com

(614) 228-1541

RODGER ECKELBERRY, ESQUIRE (by videoconference)

Baker Hostetler LLP

200 Civic Center Drive, Suite 1200

Columbus, Ohio 43215

reckelberry@bakerlaw.com

(614) 228-1541

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A P P E A R A N C E S (Cont'd)

ALSO PRESENT:

DeAndrae Shivers, Videographer

I N D E X

EXAMINATION:

PAGE

By Mr. Zimmerman

6

E X H I B I T S

NO.

DESCRIPTION

PAGE

Exhibit 1 Expert Report

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Exhibit 2 Inspection Guidelines, Vehicle
Condition

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Exhibit 3 Market Valuation Report

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Exhibit 4 NADA Guides FAQ

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Exhibit 5 Kelley Blue Book Condition Quiz

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Exhibit 6 Deposition of John Gintvainis

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Exhibit 7 Field Industry Representative
Training Manual

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Exhibit 8 Vehicle Condition Market Value
Impact Study

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Exhibit 9 Email, 4/23/2021

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Exhibit 10 N.C. Gen. Stat. 20-183.4C

223

Exhibit 11 N.C. Gen. Stat. 20-183.3

223

(*Exhibits attached.)

1 know, test it against data before I gave you a
2 definitive answer. But I think the idea of developing
3 comparable vehicles is adequate and correct. They
4 need to be conditioned. They need to be -- they need
5 to be inspected so that a complete condition of any
6 comps is known. I would include some variables, like
7 color, that affect the price of the vehicle.

8 Q So you're --

9 A -- look further as to whether, you know,
10 only sale prices should be included. What the
11 geographic, you know, spread and time -- time limits
12 should be before -- and certainly, I would have the
13 same criteria that is used to evaluate the condition
14 of the comp vehicles as being used for the total loss
15 vehicles.

16 Q So generally speaking, if you're trying to
17 determine the condition of a total -- or I'm sorry.
18 Let me start that over.

19 Generally speaking, if you want to determine
20 the value of a total loss vehicle, one way you could
21 do that would be to compare it to comparable vehicles
22 in the market?

23 A Yes.

24 Q Okay. But your opinion is that each of
25 those comparable vehicles has to be individually

1 inspected to determine the actual value of the total
2 loss vehicle?

3 A Yes.

4 Q There's no way to estimate the value of a
5 total loss vehicle without individually inspecting
6 each of those comparable vehicles?

7 A I mean, correct. I would qualify by saying,
8 yeah, you can get, you know, a kind of broad estimate,
9 but it may not be very accurate because you don't know
10 the specific condition to which you're comparing the
11 total loss vehicles.

12 Q Okay. So you won't be able to determine
13 whether or not the insured was actually paid more or
14 less than the value of their vehicle without
15 performing those inspections?

16 A Yeah. I would say that given any individual
17 vehicle, if you don't know the condition and the time
18 period and the color of the comp vehicle to which it's
19 -- or group of comp vehicles to which it's being
20 compared, then you don't know whether, you know, it
21 would be more or less than this other average that
22 you're coming up with.

23 Q Prior to you working this case, did you know
24 about the company CCC Information Services?

25 A I think I had heard of it some place, but I

1 See, I described how I think the process, you know,
2 might work, but I haven't really thought through would
3 -- would it actually -- would it work in the real
4 world to get even more accurate. I -- I'd have to
5 think about that.

6 BY MR. ZIMMERMAN:

7 Q So I guess for purposes of your expert
8 report, you didn't provide any opinions or you're not
9 offering any opinions that Garrison shouldn't have
10 used conditioning standards, right?

11 A Right.

12 Q Okay. You're saying they should have used
13 different conditioning standards?

14 A Yes.

15 Q Okay. And you don't point to any specific
16 conditioning standards they should have used instead
17 though, right?

18 A Right.

19 Q Okay. So looking at page seven of your
20 report, again, we're at the third sentence of the top
21 paragraph. You say, "The standards are so ambiguous
22 and overlapping that different adjusters will
23 undoubtedly apply them differently to the same
24 components, and it is likely that the same adjuster
25 will apply them differently on different vehicles."

1 Do you see that?

2 A Yes.

3 Q Okay. So some adjusters using these
4 standards are going to undervalue components, right?

5 A When you say undervalue --

6 Q Under condition.

7 A -- undervalue?

8 Q Going to assign the condition of the
9 component lower than it's supposed to be, right?

10 A Yes.

11 Q And then some adjusters will overvalue
12 components, right?

13 A Yeah. Probably so.

14 Q Okay. Now just to be clear, you didn't
15 actually review any claim files from class members in
16 this litigation, right?

17 A Any claim files? Right.

18 Q Okay. And you didn't actually inspect any
19 of the CCC vehicles used as comparables, right?

20 A Right.

21 Q So you're not pointing to specific examples
22 of adjusters applying these standards differently,
23 right?

24 A Right.

25 Q You're just saying theoretically, it could

1 testimony did you see that supports that point?

2 A Well, the description -- I forget the name
3 of the guy who was the CCC 30(b)(6) representative at
4 this moment.

5 Q Mr. Cervantes [ph]?

6 A I just don't remember his name. But his
7 description of what the field representatives do in
8 looking at the manual that's given to the field
9 representatives as to what they're supposed to do,
10 yes, that's my belief from both of those -- from the
11 testimony and from the training manual that cars that
12 are reasonably good and ready to sell should be
13 proofed into the comp database.

14 Q Okay. Any other documents or testimony
15 that's the basis of that belief?

16 A Not that I recall.

17 Q Okay. Do you offer any opinions that CCC
18 inspectors are intentionally overvaluing vehicles by
19 assigning better condition ratings than appropriate?

20 A No. I don't -- I think it's just part of
21 the methodology.

22 Q Okay. Do you offer any opinions that
23 Garrison's inspectors are intentionally undervaluing
24 vehicles based on condition inspections?

25 A No.

1 Q No? Okay. So I assume I know the answer to
2 this question. Are you offering any opinions that
3 Garrison used CCC so as to pay less to the -- to
4 insureds?

5 A No, I don't have any evidence of that.

6 Q Okay. Can we jump ahead to page 15 of your
7 report, please?

8 A Okay. Got it.

9 Q Okay. So in this top paragraph here, you're
10 describing the work of CCC's field representatives,
11 right?

12 A Right.

13 Q And you're talking about the pay they
14 receive?

15 A Yeah.

16 Q And four lines down, you say, "They are paid
17 on a piecemeal basis at a very low rate." Do you see
18 that?

19 A Yes.

20 Q Okay. Why do you say a very low rate?

21 A Because if you take a reasonable amount of
22 time, I mean, even five minutes a car, you would make
23 something like \$9, \$10 an hour, which is not a living
24 wage.

25 And to make \$20, which if you have a family

1 BY MR. ZIMMERMAN:

2 Q Okay, okay. So your opinions don't relate
3 to whether CCC's adjustments are too big or too small.
4 You're just saying that they shouldn't be uniform?

5 A I'm saying they don't have a basis to make a
6 judgment without a different and much more specific
7 comparison of the dealer comp vehicle components in
8 their condition, compared to the loss vehicle
9 component in its condition.

10 Q Okay, okay. I think I understand. You're
11 not offering an opinion on the number. You're not
12 saying --

13 A No.

14 Q -- CCC's condition adjustment is too high,
15 right? Or too low?

16 A No. Once -- once we're -- once we're
17 assuming that there's -- one's a good condition and
18 one's a very good condition, I -- I'm not making any
19 judgment at all whether they're doing, you know --
20 whether what they're using is too high, too low, just
21 right. I haven't examined that issue at all.

22 Q Okay.

23 A I don't know.

24 Q No, that makes sense. You didn't discuss
25 this report -- this Exhibit 8 in your report, did you?

1 My opinion is they -- they would have more
2 accuracy if they add a inspection process identical to
3 the total loss inspection process. They could have a
4 lot fewer vehicles and be more accurate.

5 Q So in your view, if they had fewer vehicles,
6 but all of those vehicles were inspected, it would be
7 more accurate?

8 A Yes. Inspected to the consistency and
9 equivalency to the total loss vehicles.

10 Q Okay. And what's the kind of statistical or
11 econometric reason for that opinion? How'd you come
12 to that conclusion?

13 A I think it's a logical conclusion that if
14 you add equivalent inspection of components, you could
15 make one to one comparisons with some accuracy. If
16 you don't have inspections that deliver the same
17 information about each components, then you will have
18 less accuracy in trying to make comparisons.

19 Q There's a tradeoff there you recognize,
20 right? So CCC doesn't have the possibility to inspect
21 every vehicle in its database, right?

22 Let me ask it this way. Is it logistically
23 possible for CCC to inspect every vehicle in its
24 database?

25 A No.

1 Q Okay. Because there's millions and millions
2 of vehicles, right?

3 A Right.

4 Q So if CCC was going to individually inspect
5 every vehicle in its database, it would have to be a
6 much smaller database, right?

7 A Yes.

8 Q And your opinion is that would be a more
9 accurate database, even though they are sacrificing
10 size and quantity?

11 A Yes. As I described, if they did the
12 inspection with equivalency to the total loss
13 inspection, it would be much more accurate even if
14 they had fewer cars to choose from.

15 Q So it'd be more accurate on the conditioning
16 side, but it might be less accurate on the pure
17 valuation side, right? Because there would be less
18 comparable vehicles to select from?

19 A Well, I guess to the extent that they're
20 using all these advertised prices, I have some concern
21 about the accuracy of using all those as opposed to
22 dealer actual -- actual sale prices.

23 So I think it could be, but I'm not certain
24 of that because of some real unknowns to me about what
25 these advertised prices represent and how close they

1 the -- that's when the vehicle arrives back at the
2 dealership, right?

3 A Right.

4 Q That's not what is turned around for sale to
5 resale to a consumer, right?

6 A Right.

7 Q So the vehicle may be in a different
8 condition when it's turned around for resale to a
9 consumer, right?

10 A Yes.

11 Q And that's because dealers do conduct
12 reconditioning and repairs, right?

13 A Yes.

14 Q And they do so because they think it's going
15 to raise the value of the vehicle?

16 A Yes.

17 Q I mean, they wouldn't spend the money
18 reconditioning it if they didn't think they could turn
19 a profit off of it, right?

20 A Right.

21 Q Okay. So generally, dealer vehicles that
22 are listed for sale are in better condition than when
23 the dealer received that vehicle, right?

24 A Yeah. No, I'd say generally, that's true.
25 I'm not 100 percent, but generally true.

1 two or \$300 for every 100 they spend because these
2 indirect costs, you've got to include in the analysis.

3 Q Okay. So some of the vehicle components,
4 when they're reconditioned by the dealer, will put
5 them in like-new condition though, right?

6 A Yeah. Maybe.

7 Q So for example, changing the tires on a car.

8 A Right.

9 Q If you replace the tires, you're generally
10 going to put new tires on?

11 A Right.

12 Q Okay. But CCC doesn't account for that in
13 its condition adjustments, right? It assumes all the
14 components are very good condition?

15 A Right.

16 Q Okay. So that component there would be a
17 benefit to the insured?

18 A Yes. That'd be a good example of that.

19 Q Okay, okay. So looking at your expert
20 report, this is the first full paragraph on page 18.
21 You say, "Dealer vehicles aren't necessarily in better
22 condition than total loss vehicles," right?

23 A Yes.

24 Q But you agree that generally, they are in
25 better condition, right?

1 MR. MALONE: Objection.

2 THE WITNESS: Yeah. I think if you
3 just took the -- you know, the bell-shape curve of
4 both, the, you know, highest point of dealer vehicles
5 would be higher than, you know, most populate point of
6 the total loss vehicles.

7 BY MR. ZIMMERMAN:

8 Q Okay. That makes sense. Yeah.

9 Now when CCC is determining the value of a
10 total loss vehicle, if a particular component is in
11 very good condition as determined by Garrison's
12 inspector, CCC gives the loss vehicle credit for that,
13 right?

14 A Well, in the sense that they don't do a
15 deduction, yes.

16 Q They actually give a positive adjustment to
17 the lost vehicle, right?

18 A No. Not if it's in very good -- comparing
19 to very good.

20 Q So for a particular -- so compared to good
21 though, it would give a positive adjustment?

22 A Oh, oh, yes. I'm sorry.

23 Q Okay, okay. And then I think we're on the
24 same page here. If all the components are listed as
25 very good, it would be equal to the condition

1 vehicles with the total loss vehicles, you should make
2 some adjustment for whatever amount the dealer spent
3 to recondition that vehicle, right?

4 MR. MALONE: Objection.

5 THE WITNESS: Some adjustment? Well, I
6 don't think you just take a reconditioning cost or
7 something and make some adjustment. I mean, you
8 should be comparing the actual condition of the total
9 loss vehicle and using the same criteria, the same
10 inspection process, the same effort to get comparable
11 condition -- on the comp vehicle.

12 BY MR. ZIMMERMAN:

13 Q Okay.

14 A And yes. You know, if you've asked -- I
15 think you've asked are many of these or are most of
16 these dealer vehicles going to be in better condition?
17 I said yes because -- get some kind of reconditioning.

18 Q Okay. I think we're on the same page, but
19 just to be clear, so these vehicles on dealer lots
20 that are -- the comparable vehicles that are in better
21 condition than the total loss vehicle should receive
22 some kind of condition adjustment, right? You're just
23 opining as to whether or not it should be the same
24 condition adjustment for every vehicle.

25 A Yeah. I guess -- yeah. If there's some --

1 if on average, there are some components of the total
2 loss vehicle that on average don't meet the very good
3 standard, while on average some of the dealer -- most
4 of the dealer vehicles -- do, then you know, on
5 average, you would have an adjustment for that
6 component.

7 Q Okay. Okay. I think I understand.

8 Okay. I'm going to have you open tab 10 and
9 11 of the set of documents I provided. This is going
10 to be Exhibit 10. It's going to be North Carolina
11 Statute 20-183.4C.

12 (Exhibit 10 was marked for
13 identification.)

14 A Yeah.

15 Q And then Exhibit 11 is conveniently going to
16 be tab 11. It's going to be North Carolina General
17 Statute 20-183.3. Do you have both those documents?

18 (Exhibit 11 was marked for
19 identification.)

20 A I have them both. I'm not sure I can have
21 them side by side. I'm not sure --

22 Q I can ask about one at a time. They're --

23 A I can -- okay. So I'm looking at the first
24 one.

25 Q Let's start -- yeah. Starting with tab 10,

1 UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
3 Civil Action No. 1:19-cv-00294-CCE-JLW
4

5 ELIZABETH V. FORTSON,)

)

)

6 Plaintiff,)

)

)

7 v.)

)

8 GARRISON PROPERTY AND)

9 CASUALTY INSURANCE COMPANY,)

)

10 Defendant.)

11
12
13
14 Zoom Video Deposition of DAVID SCHWICKERATH
15 (Taken by the Defendant)
16 Phoenix, Arizona
17 Thursday, September 9, 2021
18
19
20
21

22 Reported by: Marisa Munoz-Vourakis -
RMR, CRR and Notary Public
23
24
25

1 APPEARANCE OF COUNSEL BY ZOOM:

2 For the Plaintiff:

3 JOHN M. DeSTEFANO, ESQ.

4 Hagens Berman Sobol Shapiro LLP

5 11 West Jefferson Street, Suite 1000

6 Phoenix, AZ 85003

7 602-840-5900

8 johnd@hbsslaw.com

9
10 For the Defendant:

11 MATTHEW G. DROCTON, ESQ.

12 Baker & Hostetler LLP

13 200 Civic Center Drive, Suite 2200

14 Columbus, OH 43215

15 mdrocton@bakerlaw.com

16
17 Also Present: MICHAEL KIRBY, Videographer

18 o0o

19
20 Zoom Video Deposition of DAVID SCHWICKERATH,
21 taken by the Defendant, at Phoenix, Arizona, on the 9th
22 day of September, 2021 at 10:39 a.m., before Marisa
23 Munoz-Vourakis, Registered Merit Reporter, Certified
24 Realtime Reporter and Notary Public.
25

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1 any of the opinions in your report?

2 MR. DeSTEFANO: Foundation.

3 A. No, it would not.

4 Q. Please turn back to PJA275. The last
5 document listed there is Intermediate Accounting,
6 Chasteen, Flaherty and O'Connor, right?

7 A. That's correct.

8 Q. And I take it you relied on that textbook
9 in forming your opinions in the report, is that right?

10 A. I believe so. I footnoted it to the
11 discussion of the accounting principles in my report,
12 that's correct.

13 Q. Why did you rely on this specific textbook?

14 A. That's the textbook that I've relied on, I
15 think, for most, if not all, of my career.

16 Q. Understood. This case doesn't involve
17 financial and accounting principles, does it?

18 MR. DeSTEFANO: Form and foundation.

19 THE WITNESS: My apologies.

20 A. I guess, but I was using accounting
21 principles as a basis for that section of the report,
22 for what those terms that I had identified and what
23 those impacts would be from an accounting principle
24 standpoint.

25 Q. I understand that, Mr. Schwickerath, and

1 that wasn't the question I was asking.

2 Is it your understanding that this case is
3 about total loss claims handling processes?

4 MR. DeSTEFANO: Form and foundation.

5 A. That would be the determination of the
6 total loss amount paid to a claimant, yes.

7 Q. For an insurance claim?

8 A. That's correct.

9 Q. And I guess what I'm trying to understand
10 is this textbook is about financial accounting
11 principles, right?

12 A. I believe that's fair, accounting
13 principles, correct.

14 Q. Okay. So why did you use a textbook about
15 accounting principles in creating your report about
16 valuation of automobiles?

17 A. It was in the context of how things
18 should -- could be or should be presented, and using
19 those accounting principles as a basis so that the end
20 user would have confidence in that calculation
21 determination.

22 Q. And you would agree, though, that this case
23 though is not about financial accounting, right?

24 A. No. The determination is not about
25 financial accounting. Those principles are an analogy

1 that I used as a basis for how it should or could be
2 presented so that the end user would be able to rely
3 and verify and test reasonableness of what's being
4 presented.

5 Q. What portions of your opinion rely on the
6 textbook?

7 A. I believe it's just toward the very end of
8 the report underneath the conclusions regarding those
9 items.

10 Q. And your report mentions definitions from
11 that textbook, is that right?

12 A. That's correct.

13 Q. And you use those definitions contained in
14 the textbook in your report, right?

15 A. That's correct.

16 Q. Did you use the textbook in any other
17 manner to form your opinions?

18 A. No, I don't believe so.

19 Q. Does any part of that textbook that you
20 relied upon discuss insurance claims?

21 A. Not that I recall. I don't believe so.

22 Q. Does any part of that textbook discuss
23 valuing automobiles?

24 A. I don't believe so.

25 Q. Mr. Schwickerath, I want us to now look at

1 another document in that folder, it's titled
2 Intermediate Accounting, Chapter 1. Please let me know
3 when you have it open.

4 A. I have it open.

5 Q. Do you recognize this to be Chapter 1 of
6 the textbook we were just mentioning?

7 A. I believe that's correct.

8 Q. Just so it's clear, that's Chapter 1 of the
9 Intermediate Accounting textbook by Chasteen, Flaherty
10 and O'Connor, right?

11 A. That is correct.

12 MR. DROCTON: We'll go ahead and mark
13 this as Exhibit 4.

14 (The document referred to was marked
15 Deposition Exhibit Number 4 for
16 identification.)

17 Q. I want you to take your time, but my
18 questions will be relatively brief, okay?

19 A. Okay.

20 Q. This Chapter 1 relates to financial
21 accounting and reporting, right?

22 A. I believe so, if memory serves me correct.

23 Q. And you don't have to rely on your memory.
24 You have the Chapter 1 in front of you. You can read
25 through it, if you need to.

1 A. Okay.

2 Q. After taking a look at it, is that your
3 understanding that this chapter is regarding financial
4 accounting and reporting?

5 A. That's correct.

6 Q. You mentioned moments ago that you're using
7 financial and accounting to sort of analogize it to the
8 insurance claims handling, sort of area that we're
9 dealing with here, is that right?

10 A. That's correct.

11 Q. Why did you seek to or why did you
12 analogize financial accounting to the total loss claims
13 handling process for motor vehicles?

14 A. Well, I think it's right there, if we look
15 at, I believe it's page two, and it's the second full
16 paragraph, and it says: The term financial accounting
17 and recording encompasses the dual role of the
18 financial account. One, measuring and recording an
19 entity's economic activities; and two, communicating
20 the recorded data to external users.

21 So I thought that's, in essence, the
22 analogy here. The economic activities, which is the
23 calculation of the total loss claim; and then second,
24 communicating the recorded data, which is, in essence,
25 the calculation and the items that go into providing

1 that numerical outcome to the external users, which
2 would be the claimants or the policyholders.

3 So I think that that there sets the reason
4 for the analogy of financial accounting and recording.

5 Q. Mr. Schwickerath, that sentence doesn't
6 talk about insurance claims handling, does it?

7 A. It does not. But, again, as I said in my
8 report, I'm using it on an analogy basis.

9 Q. I understand that. And, again, you know,
10 anything in this chapter, Mr. Schwickerath, that leads
11 you to believe that these financial accounting
12 principles are applicable to insurance claims handling
13 practices?

14 A. Specifically insurance claims practices, I
15 don't believe so. But, again, I thought it was
16 appropriate, given that you're talking about the
17 measuring and recording an entity's economic
18 activities; and two, communicating that data to
19 external users.

20 Q. So is it your opinion that any time you're
21 trying to measure economic activities, you would apply
22 these same principles?

23 A. I think it depends on the situation.

24 Q. So what about the insurance claims handling
25 sort of process separates it from other processes that

1 those economic activity that went into determining that
2 outcome.

3 Q. There's nothing in the regulation, the
4 regulation that you looked at, that discusses applying
5 financial accounting principles to insurance claims
6 handling, correct?

7 MR. DeSTEFANO: Form and foundation.

8 A. The regulations itself, no, there was not.

9 Q. Thank you. And there's nothing in this
10 chapter that specifically discusses insurance claims
11 handling, right?

12 A. Specifically insurance claims handling, no,
13 it does not.

14 Q. We're on page two of the textbook, which is
15 three of the PDF, right?

16 A. I believe that's correct.

17 Q. You were just moments ago talking about
18 sort of the top section. I want to direct your
19 attention to the bottom where it talks about GAAP,
20 generally accepted accounting principles.

21 Do you see that?

22 A. Yes, I do.

23 Q. Can you please explain what GAAP is?

24 A. Generally accepted accounting principles
25 are those accounting principles that dictate and are

1 standards for the reporting of finance performance of
2 companies, predominantly publicly traded companies to
3 the external market. It's also the basis for audited
4 financial statements, which again are a very key
5 component for publicly traded companies.

6 Q. Thank you for that.

7 What role does GAAP have in insurance
8 claims handling?

9 MR. DeSTEFANO: Form and foundation.

10 A. I don't believe that GAAP has any basis in
11 insurance claims for automobiles.

12 Q. And the North Carolina insurance regulation
13 that we're discussing, you don't believe that discusses
14 applying GAAP to insurance claims handling, right?

15 A. I don't believe so, no.

16 Q. You moments ago directed our attention to
17 one sentence on this document. What in this exhibit
18 did you rely upon in forming the opinions on the case?

19 MR. DeSTEFANO: I'm sorry, counsel,
20 which document are we looking at now? Are
21 we still in the chapter?

22 MR. DROCTON: We're still on Exhibit
23 4, Chapter 1, of the intermediate accounting
24 textbook.

25 MR. DeSTEFANO: Thank you.

1 Okay. And this may be -- this is also from
2 the edition six of that intermediate accounting
3 textbook. Do you see that?

4 A. I do.

5 Q. Does this appear to be, perhaps not the
6 edition that you used in preparing your report?

7 A. I don't believe that this is the edition
8 that I've used.

9 Q. Which edition did you use?

10 A. I believe it's a second; first or second
11 edition. This is not the edition that I used.

12 Q. So first or second edition.

13 Do you recall when that edition was
14 published?

15 A. 1985, 1986, roughly.

16 Q. Did you review any of these subsequent
17 editions?

18 A. Not that I recall. As I said, I relied on
19 that textbook for most, if not all, of my career.

20 Q. But you wouldn't know if there was any
21 significant updates in the textbook since the first or
22 second edition?

23 A. With regards to those principles, I don't
24 believe that there would be any significant or
25 substantial updates or changes. Those are guiding

1 Q. Is it your understanding that this was the
2 regulation that was in effect at the time Ms. Fortson's
3 loss was adjusted?

4 A. That's my understanding, yes.

5 Q. The language in this regulation is a little
6 bit different than the language in the current version
7 that we just previously looked at, right?

8 A. That's correct.

9 Q. Can you please explain what portions --
10 well, I guess, first, is it your opinion that this
11 regulation requires insurance carriers to itemize
12 portions of a total loss report?

13 MR. DeSTEFANO: Foundation.

14 A. I believe as outlined in the report, that
15 would be under number four, which I believe is very
16 similar language to the 2020 version that when a
17 written statement is requested by a claimant, the total
18 loss payment by insurer shall be accompanied by a
19 written statement listing estimates, valuation, and
20 deductions used in calculating the payment, if any, and
21 the source of these values.

22 Q. I'm sorry, I missed that. Where are you
23 reading from, Mr. Schwickerath?

24 A. Number four.

25 Q. Number four, got it.

1 And if I got that correct, it's your
2 opinion that subpart four requires insurance carriers
3 to itemize total loss valuations?

4 MR. DeSTEFANO: Foundation.

5 A. Within a written statement, that would be
6 correct.

7 Q. This is the total loss regulation that you
8 relied upon in preparing your report, right?

9 A. That's correct.

10 Q. Besides subsection four, is there anything
11 else in this regulation that requires Garrison to
12 itemize their total loss valuations?

13 MR. DeSTEFANO: Foundation.

14 A. I don't believe so, from a layperson.

15 Q. Okay. So it's your understanding that only
16 subpart 4 applies and requires itemization?

17 MR. DeSTEFANO: Foundation.

18 A. Again, from a layperson's perspective, I
19 believe that's correct.

20 Q. And subpart four begins: If a written
21 statement is requested by the claimant, do you see
22 that?

23 A. Yes, I do.

24 Q. And I know we previously talked about how
25 you're not a lawyer, and you're not going to opine on

1 whether this, at least the prior regulation applies
2 only when a written statement is requested. Does the
3 same go for this regulation as well?

4 MR. DeSTEFANO: Foundation.

5 A. Yes, it would.

6 Q. Okay. So assuming that a court determines
7 that this regulation does not apply, subpart four,
8 unless a written statement is requested by the
9 claimant, do you have any other basis for opining that
10 Garrison must itemize their valuations?

11 MR. DeSTEFANO: Foundation.

12 A. As I mentioned earlier, I would defer to
13 legal counsel.

14 Q. And I'm not asking you to opine on the
15 legal part of whether this provision actually applies
16 or not. I understand that. I'm saying assuming this
17 does not apply, is there anything else, in your
18 opinion, that would require Garrison to itemize
19 valuations?

20 MR. DeSTEFANO: Foundation.

21 A. Again, from a lay perspective, I don't
22 believe so.

23 Q. So your opinion that Garrison did not
24 properly itemize the condition adjustment for
25 Ms. Fortson's total loss is based solely on subpart

1 four of this regulation, is that right?

2 MR. DeSTEFANO: Foundation.

3 A. Based on my lay understanding, that's
4 correct.

5 Q. Okay. I think you previously stated you're
6 not sure if Ms. Fortson actually made a request under
7 this regulation, are you?

8 A. No, I'm not.

9 Q. Based on your understanding, if a written
10 statement is not requested by a claimant, are you aware
11 of any other obligation for Garrison to perform any
12 sort of itemization on the condition adjustment?

13 MR. DeSTEFANO: Foundation.

14 A. As I believe I just mentioned, not as a
15 layperson, in my review.

16 Q. Mr. Schwickerath, so you're not an expert
17 on insurance practices or policies, are you?

18 A. No, I'm not.

19 Q. And you're not an expert on insurance
20 claims handling processes for setting methods, are you?

21 A. No, I'm not.

22 Q. And nor are you an expert on total loss
23 valuations, are you?

24 A. No, I'm not.

25 Q. You're not an expert on North Carolina

1 insurance regulations either, right?

2 A. No, I'm not.

3 Q. And before this case, you had no experience
4 with the North Carolina's insurance regulations, right?

5 A. I don't believe so.

6 Q. So Mr. Schwickerath, if a court should rely
7 on you to provide an opinion as to the meaning of 11
8 NCAC4.0418, right?

9 MR. DeSTEFANO: Form and foundation.

10 A. No, I don't believe so.

11 Q. Are you aware of anywhere in the North
12 Carolina total loss claims handling laws and
13 regulations that says financial accounting standards
14 and principles apply?

15 MR. DeSTEFANO: Foundation.

16 A. No, I'm not.

17 Q. On what basis then do you believe that
18 financial accounting principles apply to 11 NCAC4.0418?

19 A. Well, as I testified earlier this morning,
20 that goes to an analogy of the accounting principles
21 for providing the information to the end users, in this
22 case, the claimants. That's about as far as the
23 process and how those calculations of the economic
24 outcomes are determined.

25 Q. Okay. So you mentioned that you worked on

1 some insurance claims handling matters in your prior
2 experience as a litigation consultant, right?

3 A. That's correct.

4 Q. But you don't have any prior experience in
5 insurance claims handling in North Carolina, right?

6 A. No, I do not.

7 Q. There's nothing in your background that
8 would lead you to believe that financial accounting
9 principles specifically apply to North Carolina's
10 insurance claims handling regulations, right?

11 A. No. Again, I was using it as an analogy
12 for the presentation information.

13 Q. Are you aware of any courts supplying
14 financial an accounting principles to insurance claims
15 handling regulations?

16 A. Not as I sit here.

17 Q. Mr. Schwickerath, can you please turn back
18 to Exhibit 1, your report, and direct your attention to
19 PJA251?

20 A. Okay.

21 Q. Do you see under subheading five there
22 where it says: CCC's condition adjustment for
23 comparable vehicles relied upon by Garrison does not
24 meet the standards to provide verifiable information,
25 explanations of additions or deductions from the actual

1 Q. What standards are you referring to?

2 A. That would be the standards that we just
3 discussed in the regulations for North Carolina.

4 Q. Okay. And there's quotations in that
5 sentence. Are you quoting to a source?

6 A. I believe that I was. There's not a
7 footnote, my apologies. I certainly was looking at
8 something, but I didn't footnote it, so that's my
9 omission.

10 Q. No worries. Do you recall what you were
11 citing to?

12 A. Not as I sit here. I'd have to go look.

13 Q. That's fine. Mr. Schwickerath, you're not
14 offering any opinions today on whether a condition
15 adjustment may be made to a comparable vehicle, right?

16 A. No, I'm not.

17 Q. And you have no opinions on whether the
18 dollar amount of any condition adjustment was
19 appropriate, right?

20 A. No, I do not.

21 Q. And you've reviewed 11 NCAC4.0418. Is it
22 your understanding that that regulation actually
23 contemplates condition adjustments?

24 MR. DeSTEFANO: Form and foundation.

25 A. Could you repeat that? I'm not sure I

1 understanding when we used the NADA, that it was an
2 amount for the base vehicle, and then certain dollar
3 amounts were options and then plus or minus for
4 mileage. So under your assumption, I'd have to go back
5 and look.

6 Q. And what you just described, is that not
7 what CCC does?

8 MR. DeSTEFANO: Form and foundation.

9 A. It does, but then it also adds a condition
10 adjustment. That's the same, for each of the
11 comparable vehicles, based on a calculation that uses
12 either surveys for six different components, multiplies
13 them all together and then applies that outcome to a
14 hypothetical typical vehicle.

15 Q. Do you understand that NADA has multiple
16 values, such as retail and wholesale?

17 A. I believe that's correct.

18 Q. Do you understand that NADA does not
19 disclose how it calculates the difference between
20 retail and wholesale value for an individual vehicle?

21 MR. DeSTEFANO: Foundation.

22 A. I don't recall. I'd have to look. I'm
23 sorry, it's been some time. I just don't recall.

24 Q. Mr. Schwickerath, is it your understanding
25 that under North Carolina's regulation, insureds are

1 entitled to the actual cash value of their loss
2 vehicle?

3 MR. DeSTEFANO: Foundation.

4 A. Yes, I believe that's correct.

5 Q. And is it also your understanding that
6 Ms. Fortson's policy entitles her to actual cash value
7 for loss vehicle?

8 MR. DeSTEFANO: Foundation.

9 A. I believe that's correct. I don't recall
10 that's specifically her policy, but I believe that's
11 correct.

12 Q. You're not aware of anything that entitles
13 an insured like Ms. Fortson to some value above actual
14 cash value, right?

15 MR. DeSTEFANO: Form and foundation.

16 A. No, I believe it's actual cash value for
17 the vehicle.

18 Q. If the comparable vehicle condition
19 adjustment is removed, what effect would that have on
20 the actual cash value of the vehicle?

21 A. The actual cash value of the vehicle would
22 increase by the removal of said condition adjustment.

23 Q. And I think, as you previously said, you're
24 not actually taking issue with the dollar amount of the
25 condition adjustment for the comparable vehicles,

1 right?

2 MR. DeSTEFANO: Form and foundation.

3 A. That's correct.

4 Q. You have no opinion whether the \$722
5 condition adjustment for the comparables for
6 Ms. Fortson's CCC report were too high or too low,
7 right?

8 MR. DeSTEFANO: Form and foundation.

9 A. No, I can't -- there's no information to
10 test accuracy or the reasonableness.

11 Q. That wasn't my question, Mr. Schwickerath.
12 I am asking you, you have no opinion on
13 whether the dollar amount, 722, is too high or too low
14 for the comp vehicles in Ms. Fortson's CCC report,
15 right?

16 A. Correct.

17 MR. DeSTEFANO: Form and foundation.

18 A. I have no opinion. I can't see how that
19 calculation is determined, so no, I don't have an
20 opinion.

21 Q. Thank you. So how can you testify that
22 removing the comparable vehicle condition adjustment
23 positively increases the amount of actual cash value?

24 A. Because that deduction is not itemized or
25 verifiable to test reasonableness and the accuracy of

1 that adjustment for the specific total loss vehicle.

2 Q. Mr. Schwickerath, what kind of car do you
3 drive?

4 A. I have a Hyundai Equus.

5 Q. Did you say a Hyundai?

6 A. Equus.

7 Q. I'm not familiar with that.

8 Is that a sedan or an SUV?

9 A. It's a sedan.

10 Q. What year is it?

11 A. 2016.

12 Q. And about how many miles?

13 A. Under 15,000.

14 Q. Okay. Suppose you received a CCC report
15 with a value of \$100,000 for your vehicle, okay?

16 A. Okay.

17 Q. Would you agree that your vehicle is not
18 worth \$100,000?

19 A. I think it would be unlikely that my
20 vehicle is worth \$100,000.

21 Q. You would be pretty happy if you received
22 \$100,000 for your vehicle, right?

23 A. Yes, I would be happy if I received
24 \$100,000 for my vehicle.

25 Q. And you would be happy to accept \$100,000

1 in exchange for your vehicle?

2 A. Yes, I would.

3 Q. Suppose the CCC report had a thousand
4 dollar comparable vehicle condition adjustment, okay?

5 A. Okay.

6 Q. So that results in -- scratch that.

7 Suppose you received a CCC report, like
8 Ms. Fortson's, with a comparable vehicle condition
9 adjustment of \$1,000, okay?

10 A. You said comparable vehicle adjustment? I
11 just wanted to make sure and clarify.

12 Q. My apologies, I meant to say comparable
13 vehicle condition adjustment.

14 A. Okay.

15 Q. And it is in the same format as presented
16 in Ms. Fortson's CCC report, okay?

17 A. Okay.

18 Q. Is it your opinion that that thousand
19 dollar condition adjustment would cause you damages?

20 A. Yes, I have no way to verify or check the
21 reasonableness or test that amount. There's no
22 support. It's a deduction that is unsupported.

23 Q. Even though you agree that your vehicle is
24 not actually worth \$100,000, you still think you
25 incurred damages?

1 A. Well, I'm sorry, are we talking still about
2 the \$100,000 value, or are you just talking that I got
3 a report, and there was a condition adjustment of
4 \$1,000 on my report?

5 Q. You received a CCC report with a total
6 value of \$100,000 for your Hyundai, and in the CCC
7 report, there's a condition adjustment to the
8 comparable vehicles used to calculate value in the
9 amount of \$1,000. Do you follow?

10 A. I do now.

11 Q. And that comparable vehicle condition
12 adjustment is listed in the same format as listed in
13 Ms. Fortson's CCC report, okay?

14 A. Okay.

15 Q. Is it your opinion that you would be
16 damaged in the amount of \$1,000 by that condition
17 adjustment to the comparable vehicles?

18 A. I'm not sure. Given that the valuation of
19 my vehicle was \$100,000, which is certainly worth more
20 than my car itself, I don't, I don't know that I'd be
21 damaged, because I'm still receiving \$100,000 instead
22 of \$101,000.

23 Q. Okay. And so I take it that financial
24 accounting principles wouldn't entitle you then to
25 another \$1,000, right?

1 of Mr. Hausman-Cohen's declaration, is that right?

2 A. That's correct.

3 Q. Okay. Besides those two sources, does your
4 knowledge of Garrison's claims handle practices come
5 from anywhere else?

6 A. I guess it would be the deposition by
7 Mr. Lopez, which is referenced in my report, and to the
8 extent that the CCC is part of that process, then those
9 documents from that presentation and other items that
10 are referenced in my report will also be sources.

11 Q. Okay. Mr. Schwickerath, is it your opinion
12 that CCC -- that the CCC report is intended to mislead
13 consumers?

14 A. I don't have an opinion on that.

15 Q. Okay. You testified earlier that you have
16 experience in valuing businesses, right?

17 A. That's correct.

18 Q. Is it your belief that you have specialized
19 knowledge and experience in valuing businesses?

20 A. Well, I believe I do. I've qualified as an
21 expert on many occasions.

22 Q. And do your clients sometimes not have that
23 same skill to value a business?

24 A. Various clients have various skills
25 relating to the value of a business.

TAB 51
DJA0611 - DJA0672

FILED UNDER
SEAL

TAB 52
DJA0673 - DJA0744

FILED UNDER
SEAL

1 UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
3 Civil Action No. 1:19-cv-00294-CCE-JLW
4

5 ELIZABETH V. FORTSON,)

)

)

6 Plaintiff,)

)

7 v.)

)

8 GARRISON PROPERTY AND)

9 CASUALTY INSURANCE COMPANY,)

)

10 Defendant.)

11
12
13 Zoom Video Deposition of WILLIAM BERGLUND
14 (Taken by the Defendant)
15 Oak Brook, Illinois
16 Thursday, September 2, 2021
17
18
19
20

21 Reported by: Marisa Munoz-Vourakis -
RMR, CRR and Notary Public
22
23
24
25

1 APPEARANCE OF COUNSEL BY ZOOM:

2 For the Plaintiff:

3 JOHN M. DeSTEFANO, ES .

4 Hagens Berman Sobol Shapiro LLP

5 11 West Jefferson Street, Suite 1000

6 Phoenix, AZ 85003

7 602-840-5900

8 ohnd hbssla .com

9
10 For the Defendant:

11 KEVIN P. ZIMMERMAN, ES .

12 Baker Hostetler LLP

13 200 Civic Center Drive, Suite 2200

14 Columbus, OH 43215

15 kzimmerman bakerla .com

16
17 Also Present: MICHAEL KIRBY, Videographer

18 oOo

19
20 Zoom Video Deposition of WILLIAM BERGLUND,
21 taken by the Defendant, at Oak Brook, Illinois, on the 2nd
22 day of September, 2021 at 10:07 a.m. (Eastern Standard
23 Time), before Marisa Munoz-Vourakis, Registered Merit
24 Reporter, Certified Realtime Reporter and Notary Public.
25

I N D E

Examination of: Page

WILLIAM BERGLUND

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FURTHER E AMINATION BY MR. 311

ZIMMERMAN

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McCathren 309

1 Ms. Fortson as paid more or less than she should have
2 been paid, right

3 MR. DeSTEFANO: Form and foundation.

4 A. That is correct.

5 . How could we determine whether Ms. Fortson
6 as paid more or less than she should have been paid

7 MR. DeSTEFANO: Form and foundation.

8 A. Again, I'm asking the same question
9 repeatedly. If they could itemize the condition
10 adjustment for each of the four vehicles and indicated
11 how they applied them, then Ms. Fortson could look and
12 make a determination of whether or not she could accept
13 those figures. Without that type of breakdown, she's
14 got no way of knowing.

15 . Okay. No, in your expert report, you
16 don't mention the options adjustment as being
17 insufficiently itemized, the options adjustment we see
18 on page eight and nine, right

19 A. I don't believe so. Let me take a look at
20 the option adjustments.

21 . Yeah, go ahead.

22 (Pause.)

23 A. Yeah, I don't believe I rendered an opinion
24 on the basis for the option adjustments.

25 . Why not

1 A. Because there s no specificity as to hat
2 the ad ustments applied to. There as not. There as
3 notice ith regard to the condition ad ustment. It s
4 ust a blanket number.

5 . So you don t mention the mileage ad ustment
6 as being improperly itemized either, right

7 A. That is correct.

8 . Okay. And hy not

9 A. Same reason.

10 . That s ust a single number that s listed
11 there, right

12 A. That is correct.

13 . And the condition ad ustment is ust a
14 single number, right

15 A. But the condition ad ustment applies to
16 more than ust one item. It applies to the overall
17 condition of the vehicle. I think there s a
18 significant difference bet een them.

19 . So you don t think any additional
20 information as re uired for the mileage ad ustment
21 though, am I right about that

22 A. That s correct.

23 MR. DeSTEFANO: Foundation.

24 BY MR. ZIMMERMAN:

25 . Would it have been appropriately itemized

1 if CCC broke out the condition adjustment based on the
2 kind of components of each vehicle

3 A. Again, if it provided a detailed listing of
4 how they arrived at the numbers, I think that would
5 have been appropriate.

6 . Was it appropriate for Garrison and CCC to
7 make an option adjustment, as they did here

8 A. Okay. What do you mean by option
9 adjustment

10 . The options adjustment we're looking at on
11 page eight. Do you see that, 229 for the comp. one
12 minus 90 for comp. too. Do you see here I'm looking

13 A. Oh, okay, yes, I see that.

14 . Okay. Do you have any opinions as to
15 whether or not it was appropriate for CCC to make that
16 options adjustment

17 A. I have no opinion.

18 . Okay. Was it appropriate for CCC to make
19 the adjustment for mileage

20 A. It seems reasonable.

21 . Was it appropriate for CCC to make the
22 condition for options -- condition adjustment for
23 options

24 A. Okay. When you say condition adjustment,
25 it refers to something specific.

1 . You re right, yeah, you re right.

2 Was it appropriate for CCC to make the
3 options ad ustment that e re looking at here

4 A. Yes.

5 . No , can you look through this CCC One
6 report and identify any portions of it that you think
7 make it represented to be authoritative

8 A. We ve got a multiple page report here. I
9 don t kno ho much time you ant me to spend on this.
10 I don t kno if the ord authoritative is used any here
11 on this report or not, but I have to revie the entire
12 report to give a response to that. Do you ant me to

13 . Let me ask you slightly differently.

14 You did revie this report hen putting
15 together your opinions for the expert report, right

16 A. Yes.

17 . And is it your opinion that the CCC report
18 self-identifies as or represents itself to be
19 authoritative

20 A. I don t kno if the report represents
21 itself. I think the impression from the Garrison s
22 ad uster standpoint is that it is an authoritative
23 report, and that is ho it as presented to the
24 pol icyholder.

25 . Okay. So the report itself isn t saying

1 UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
3 Civil Action No. 1:19-cv-00294-CCE-JLW

4 ELIZABETH V. FORTSON,)

5 Plaintiff,)

6 vs.)

7 GARRISON PROPERTY AND CASUALTY)
INSURANCE COMPANY,)

8 Defendant.)
)

9
10
11
12 Videotaped Remote Deposition of
13 DR. LANCE DARSHANA KAUFMAN
14 (Taken by Defendant)
15 Corvallis, Oregon
16 Tuesday, August 24, 2021
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21
22
23

24 Reported in Stenotype by
Lauren M. McIntee, RPR, CRR
25 Transcript produced by computer-aided transcription

1 APPEARANCES

2 ON BEHALF OF THE PLAINTIFF:

3 Tory Beardsley, Es uire (via Zoom)
4 Hagens Berman Sobol Shapiro, LLP
5 11 West Jefferson Street, Suite 1000
6 Phoenix, Arizona 85003
7 (602) 840- 5900
8 Toryb hbssl a .com

9 ON BEHALF OF THE DEFENDANT:

10 Rodger L. Eckelberry, Es uire (via Zoom)
11 Mathe Drocton, Es uire (via Zoom)
12 Baker Hostetler, LLP
13 200 Civic Center Drive, Suite 2200
14 Columbus, Ohio 43215
15 (614) 462- 5189
16 Reckelberry bakerla .com
17 Mdrocton bakerla .com

18 ALSO PRESENT:

19 Michael Kirby, Videographer (via Zoom)

20 VIDEOTAPED REMOTE DEPOSITION OF DR. LANCE DARSHANA
21 KAUFMAN, a itness called on behalf of Defendant, before
22 Lauren M. McIntee, Registered Professional Reporter,
23 Certified Realtime Reporter, and Notary Public, in and
24 for the State of North Carolina, in Corvallis, Oregon,
25 on Tuesday, August 24, 2021, commencing at 7:33 a.m. PST

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INDE OF E AMINATIONS

By Mr. Eckelberry..... Page 4

INDE OF E HIBITS

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Exhibit 4	Report Summary, Reference Number 88957510 (Garrison P C 00035559 to 35575) (CTRL 8379)	124
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Exhibit 6	Sample Claim Activity Log (Garrison P C 00039938 to 39958)	158
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Exhibit 9	Report Summary, Reference Number 82424586 (Garrison P C 00000206 to 226) (Fortson CCC Report)	173

1 the mileage deduction is itemized, correct

2 MS. BEARDSLEY: Objection, form. Outside the
3 scope of the report.

4 A. Not in the context that's used in my report.

5 BY MR. ECKELBERRY:

6 . Okay. And what context do you use itemized

7 A. Well, I would use it to refer to a breakdown
8 of the factors leading to the size of the condition
9 adjustment.

10 . Okay. So if I understood what you said
11 earlier, there are varying degrees of deductions. So
12 it's -- is it fair to say that the deductions to the
13 comparable vehicles are itemized, but you feel they
14 should be itemized to a more specific degree

15 A. Not should.

16 MS. BEARDSLEY: Scope.

17 A. I don't intend to -- to present or have an
18 opinion about what should have been done. I -- in my --
19 my opinion in this case rests on the premise that the --
20 the adjustment is an illegal adjustment and -- and that
21 opinion is -- that -- that's an assumption that my
22 understanding is other experts and the counsel in this
23 case will be making that argument. I can offer an
24 opinion about what seems reasonable to me as a method --
25 a level of itemization, but it's not necessarily what

1 should have been done because that's outside the scope
2 of -- of my analysis and my expertise.

3 So -- so that seems reasonable, a reasonable
4 level of itemization to me would be to have, for each
5 comparable vehicle, to have a list of the components,
6 the adjustment for each component, and the basis for
7 classifying that component in the condition that it's
8 classified. And, you know, that provides a level of
9 detail that would allow a claimant to review -- review
10 the comparable vehicles. If they want to, they could go
11 and confirm the condition of the vehicles and validate
12 the report. But I don't necessarily have an opinion
13 that's what should have been done. That's just what
14 seems reasonable to me.

15 BY MR. ECKELBERRY:

16 . Reasonable to you in your personal opinion,
17 not as an expert am I right

18 A. Both.

19 . Okay. Are you familiar with the industry
20 custom and standard as far as that level of itemization
21 is used

22 MS. BEARDSLEY: Objection. Outside the scope
23 of the report.

24 A. For which industry

25 BY MR. ECKELBERRY:

1 9:32 a.m.

2 (Recess taken 9:32 a.m. to 9:51 a.m. PST)

3 THE VIDEOGRAPHER: We are back on the record
4 at 9:51 a.m.

5 BY MR. ECKELBERRY:

6 . Dr. Kaufman, Section 3 of your report begins
7 on Page PJA0476. The last sentence states, Thus,
8 plaintiff asserts and this report assumes the condition
9 adjustment is improper and unlawful.

10 A. Yes.

11 . I believe you testified earlier that you
12 profess no legal expertise is that correct

13 A. That is correct.

14 . So you have no opinion on the legality or
15 illegality of the condition adjustments to the
16 comparable vehicles is that right

17 A. That is correct.

18 . Do you have any expert opinion on whether the
19 condition adjustment complies with the terms of
20 plaintiff's insurance policy

21 A. No.

22 . Do you have any evidence that the comparable
23 vehicle condition adjustments were excessive given the
24 condition of the comparable vehicles

25 MS. BEARDSLEY: Objection, outside the scope.

1 testified to, 5 to 10 percent could be many, correct
2 Or more. 5 to 10 percent or more, correct

3 A. Correct.

4 . Okay. If 90 percent of the 90 percent that
5 aren't inspected are in very good condition, that could
6 that percentage be of the total of comparable vehicles
7 I apologize. I'm bad at math. What's 90 percent of
8 90 percent

9 A. That's .9 times .9, so 81. .81 percent.

10 . So if -- I'm sorry. Go ahead.

11 A. I -- I didn't have anything to add.

12 . If 90 percent of the 90 percent that aren't
13 inspected are in very good condition, that could be, did
14 you say 81 percent of the total

15 A. Yes.

16 . So if 81 percent of the total comparable
17 vehicles are in very good condition, your methodology
18 for calculating damages could overstate harm to the
19 class, couldn't it

20 A. No.

21 MS. BEARDSLEY: Objection. Form, foundation.

22 BY MR. ECKELBERRY:

23 . Why not

24 A. Well, the methodology is not -- the
25 methodology is -- is a result of the condition

1 ad ustment being improper and unla ful. And it s not a
2 methodology that -- it s not a methodology that is
3 applying a revaluation after the fact. So -- so hat
4 the methodology does is it -- it -- it simply takes the
5 condition ad ustment of the -- of the comparable vehicle
6 out of the vehicle valuation.

7 . Okay. So your methodology --

8 (PHONE RINGING.)

9 . Strike that.

10 For purposes of your methodology, it doesn t
11 matter if a given insured as paid hat their vehicle
12 as orth or more, does it

13 MS. BEARDSLEY: Ob ection, form.

14 A. Well, there s a lot of information kind of
15 loaded in that uestion. So there is a process that the
16 insurer established for valuing vehicles, and that
17 process has several components, one of hich as
18 illegal. And my methodology removes the illegal
19 component hile maintaining the insurer s valuation
20 process. And that -- that doesn t -- that results in a
21 valuation for the vehicle.

22 No , hat you re asking for is a number of,
23 you kno , is it overvaluing or undervaluing But it s
24 -- it is valuing. I mean, that s -- that s the -- there
25 is no over or undervaluing in that scenario.

1 could -- they ould certainly -- if -- if I ere engaged
2 to distribute damage payments, I ould distribute it
3 proportionately to the actual loss. And in this case,
4 there s no loss, so I ouldn t ascribe any -- any
5 payment to the individual.

6 And finally, again, I defer to Larry,
7 Mr. Hausman-Cohen on specifics, but my understanding is
8 that the hypothetical that you re coming up ith is a
9 very, very small number. I ould be surprised if it s
10 more than -- more than 10 or 20 class members.

11 . You ould be surprised, but you don t kno
12 for a fact, do you

13 A. Right.

14 . You re not expressing opinion on the
15 propriety of mileage or option ad ustments, are you

16 A. No.

17 . In the -- strike that.

18 Are you a are that some of the punitive class
19 members received settlement payments based on CCC
20 reports that rely on earlier valuations and not the last
21 valuation

22 A. Yes.

23 . And did you take that into account in your
24 report

25 A. What do you mean by take it into account

1 UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
3

4 ELIZABETH V. FORTSON,
5 Plaintiffs,

6 v.

Civil Action No.

7 GARRISON PROPERTY AND CASUALTY
8 INSURANCE COMPANY,
9 Defendant.

1: 19- cv- 00294-
CCE- JLW

10
11 VIDEOTAPED DEPOSITION OF RANDALL MCCATHREN

12 DATE: Tuesday, August 17, 2021

13 TIME: 10:08 a.m.

14 LOCATION: Remote Proceeding

15 Greensboro, North Carolina 27420

16 REPORTED BY: Joshua Seagondollar, Notary Public

17 JOB No. : 4765452
18
19
20
21
22
23
24
25

A P P E A R A N C E S

ON BEHALF OF PLAINTIFF, ELIZABETH V. FORTSON:

MICHAEL MALONE, ES UIRE (by videoconference)

Hendren Red ine Malone PLLC

4600 Marriott Drive, Suite 150

Raleigh, North Carolina 27612

mmalone hendrenmalone.com

(919) 420- 7867

ON BEHALF OF DEFENDANT, GARRISON PROPERTY AND CASUALTY
INSURANCE COMPANY:

KEVIN ZIMMERMAN, ES UIRE (by videoconference)

Baker Hostetler LLP

200 Civic Center Drive, Suite 1200

Columbus, Ohio 43215

kzimmerman bakerla .com

(614) 228- 1541

RODGER ECKELBERRY, ES UIRE (by videoconference)

Baker Hostetler LLP

200 Civic Center Drive, Suite 1200

Columbus, Ohio 43215

reckelberry bakerla .com

(614) 228- 1541

A P P E A R A N C E S (Cont d)

ALSO PRESENT:

DeAndrae Shivers, Videographer

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2
3
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I N D E

E A M I N A T I O N :

PAGE

By Mr. Zimmerman

6

E H I B I T S

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Exhibit 11	N. C. Gen. Stat. 20-183.3	223

(Exhibits attached.)

1 A In my experience, there s a significant
2 number particularly of vehicles more than five years
3 old that may not meet the very good standard on one or
4 more of their components.

5 No you mentioned five years old there, but
6 you re using the kind of condition standards for five-
7 year-old vehicles, right

8 A Yes. Yeah.

9 Okay. So hy does it matter the age of the
10 vehicle Don t the standards kind of ad ust for that

11 A They do.

12 So it s still your opinion that a
13 significant number of vehicles for sale on used dealer
14 lots are actually in good condition, not very good
15 condition

16 A I said one or more of the components are in
17 the good versus very good condition.

18 Okay. Does CCC ever classify vehicles on
19 dealer lots as exceptional or like-ne

20 A I -- not that I sa .

21 But some vehicles on dealer lots actually
22 are in like-ne condition, right

23 A Yes. Probably so.

24 And some vehicles on dealer lots -- some
25 used vehicles on dealer lots might have components in

1 like-ne condition, right

2 A Yes.

3 So that s actually a benefit to the insurer,
4 right

5 A To the extent they get used as comps, yes.

6 Okay. Because they ere only being
7 classified as very good, hen in reality, they re
8 priced according to their like-ne condition, right

9 A Yes. Without kno ing, like, is it t o
10 percent Five percent Ten percent You kno , it s
11 going to be a small number. The older the vehicle --
12 you re not going to find a lot of eight, nine, ten,
13 eleven-year-old cars for hich any of the components
14 are in pristine or exceptional or hatever the first,
15 you kno , category specification is. The ne er the
16 car, the more likely one or more components might be
17 in there.

18 Okay. That makes sense. That makes sense.
19 And I m not asking you to -- this time, I m not asking
20 you to offer a percentage of ho many are like-ne .

21 A Good.

22 So for these kind of vehicles, the CCC
23 should actually make a larger condition ad ustment
24 than they do, right

25 A Well, you re probably talking about one of

1 the comps. There might be three, four, five comps, so
2 you know, you could end up making an adjustment
3 for that comp, not for all the comps if they all
4 didn't have that component in exceptional condition.

5 Yeah. No, that makes sense. But for any of
6 the comparable vehicles that are in like-new
7 condition, CCC should make a larger adjustment than
8 they do to properly price that, right

9 A They could.

10 Okay. And that could be a more accurate
11 valuation

12 A Yeah. That -- of that component in overall
13 comparison. Yeah. Assuming that they -- they made
14 the proper comparisons on the other ten components.

15 Okay.

16 MR. ZIMMERMAN: And I know we haven't
17 quite been going for an hour here, but I actually have
18 to take a quick break. Can we go off the record

19 THE WITNESS: Sure.

20 VIDEOGRAPHER: All right. The time is
21 3:22 p.m. We're off the record.

22 (Off the record.)

23 VIDEOGRAPHER: The time is 3:35 p.m.
24 We're back on the record.

25

1 are to meaningful ACV.

2 So quickly here, you mention it could be
3 more accurate of they used actual sale prices, right

4 A Yes.

5 But they actually use list prices, right

6 A Yeah. I think they use list prices until
7 there's a sale, but they also use real take or
8 whatever that terminology is, prices.

9 That's a benefit to the insured, right
10 Because the list price is generally going to be higher
11 than the actual sale price

12 A Yes. But if there's a bill-take price, they
13 advertise it for 10, but they bill take 9,200 --
14 9,200, you know, that -- that's a lower number and it
15 may be that some customer could pay 96, and they end
16 up selling it for more than the bill-take price.

17 So there's customers who purchase vehicles
18 for more than the bill-take price out there

19 A Sure. Because they're starting to negotiate
20 at ten.

21 Oh, so does CCC use the bill-take price or
22 do they use the list price of the vehicles

23 A I think they use the bill-take price.

24 Okay. And here does that understanding
25 come from

1 A Some here -- some here in all these
2 documents and or depositions.

3 Fair enough. To the extent that they do use
4 the list price, that provides a benefit to the
5 insured, right Because there s a negotiation
6 do n ard

7 A Yes.

8 Okay. Let s turn to page 17 of your expert
9 report, please.

10 A Got it.

11 Okay. In the second sentence of the first
12 full paragraph, you say, CCC includes the consumer
13 offered vehicles as ell as the dealer offered
14 vehicles in its valuations. Do you see that

15 A Yes.

16 Okay. But hen a consumer offered vehicle
17 is used as a comparable, CCC doesn t apply a condition
18 ad ustment, right

19 A Right. Right. No, I remember that. Yes.

20 Okay. So hat s the problem ith using
21 consumer offered vehicles then

22 A Really ust that you have no idea hat the
23 condition is.

24 What do you mean by that

25 A I mean, the consumer can offer a vehicle

1 UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
3 Civil Action No. 1:19-cv-00294-CCE-JLW
4

5 ELIZABETH V. FORTSON,)

6 Plaintiff,)

7 v.)

8 GARRISON PROPERTY AND)

9 CASUALTY INSURANCE COMPANY,)

10 Defendant.)

11
12
13
14 Zoom Video Deposition of DAVID SCHWICKERATH
15 (Taken by the Defendant)
16 Phoenix, Arizona
17 Thursday, September 9, 2021
18
19
20
21

22 Reported by: Marisa Munoz-Vourakis -
RMR, CRR and Notary Public
23
24
25

1 APPEARANCE OF COUNSEL BY ZOOM:

2 For the Plaintiff:

3 JOHN M. DeSTEFANO, ES .

4 Hagens Berman Sobol Shapiro LLP

5 11 West Jefferson Street, Suite 1000

6 Phoenix, AZ 85003

7 602-840-5900

8 ohnd hbssla .com

9
10 For the Defendant:

11 MATTHEW G. DROCTON, ES .

12 Baker Hostetler LLP

13 200 Civic Center Drive, Suite 2200

14 Columbus, OH 43215

15 mdrocton bakerla .com

16
17 Also Present: MICHAEL KIRBY, Videographer

18 oOo

19
20 Zoom Video Deposition of DAVID SCHWICKERATH,
21 taken by the Defendant, at Phoenix, Arizona, on the 9th
22 day of September, 2021 at 10:39 a.m., before Marisa
23 Munoz-Vourakis, Registered Merit Reporter, Certified
24 Realtime Reporter and Notary Public.
25

I N D E

Examination of: Page

DAVID SCHWICKERATH

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DEPOSITION E HIBITS

E HIBIT NUMBER DESCRIPTION PAGE

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Sch ickerath

Exhibit 2 2020 USAA Annual Report 19

Exhibit 3 2019 USAA Annual Report 20

Exhibit 4 Intermediate Accounting,
Chapter 1 25

Exhibit 5 Intermediate Accounting Chapter
2 32

Exhibit 6 Bates number 81
CCC Fortson000109694

Exhibit 7 Bates stamp 82
CCC Fortson000109679

Exhibit 8 Bates number Garrison PC8045 84

Exhibit 9 Fortson CCC Report 100

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Exhibit 11 11 NCAC4. 0418 (prior version) 138

Exhibit 12 Umpire Report 139

Exhibit 13 Bates number CCCIS027199 157

Exhibit 14 1-14-11 USAA MCE 183

Exhibit 15 Allstate MCE 188

1 vehicles has the same, I guess, formula used for the
2 loss vehicle

3 A. I m not sure that that s the case.

4 . Is it not your understanding if the loss
5 vehicle is in very good condition in each of the
6 categories, the positive condition ad ustment for the
7 loss vehicle ould cancel out the negative ad ustment
8 for the comp vehicles on dealer lots

9 MR. DeSTEFANO: Form and foundation.

10 A. I believe that s ho the math is intended
11 to ork, so that if you have a very good condition
12 automobile, that s the total loss and a very good
13 comparable vehicle, there ould be no ad ustment
14 necessary.

15 . Okay. So ho is it that -- ell, let me
16 ask one more uestion. If Ms. Fortson s vehicle as in
17 very good condition in each of the categories, is it
18 your understanding that there ould be a positive 720
19 condition ad ustment

20 MR. DeSTEFANO: Form and foundation.

21 A. I mean, it s possible. I m not exactly
22 sure that it ould be the 722, since the 722 represents
23 an average of all of those vehicles, all of those
24 comparables.

25 So you ould have different amounts through

1 each of those six -- I'm sorry, each of those four
2 comparable vehicles for those six components, you could
3 then potentially have differences, and I don't think
4 that that math necessarily works, unless somehow that
5 722 represents exactly the same as the vehicle for
6 Ms. Fortson, but I'm not sure that that's possible,
7 given that you have these six comparable vehicles with
8 all different aspects and it's an average.

9 So I'm not sure that that fits.

10 . Have you ever seen a CCC report where the
11 loss vehicle is rated very good in each condition

12 A. No, I have not.

13 . All right. Can you please open in your
14 folder CCC IS027199.

15 A. Okay.

16 . I take it you've not seen this report
17 before, is that right

18 A. No, I have not.

19 . Okay. You can see from the bottom left,
20 there's a Fortson vs. Garrison Property and Casualty
21 case title and our case number here. Do you see that

22 A. I do.

23 . And in the bottom right-hand corner
24 CCCIS027199. Do you see that

25 A. Yes, I do.

1 MR. DROCTON: We ll mark this one as
2 Exhibit 13.

3 (The document referred to as marked
4 Deposition Exhibit Number 13 for
5 identification.)

6 . And please turn to page CCCIS027204.

7 A. Okay.

8 . Do you see the vehicle condition table for
9 the loss vehicle

10 A. I do.

11 . And do you see here the condition is very
12 good for each of the six condition categories

13 A. I do.

14 . And on the right-hand corner -- or
15 right-hand column, there s a value impact of zero
16 dollars for each of those categories, right

17 A. That s correct.

18 . And if you could please turn ahead to
19 CCCIS027026.

20 A. Okay.

21 . Let me know when you re there.

22 A. I am.

23 . Please take a look at the, roughly the
24 middle of the page, here it shows adjustments. You ll
25 see options and mileage. Let me know when you re

1 there.

2 A. I m there.

3 . Do you see any ad ustment for condition

4 A. No, I do not.

5 . Based on your revie of the loss vehicles
6 condition and the ad ustments share for the comp
7 vehicles, is it your understanding that there s a zero
8 dollar condition ad ustment hen the loss vehicle is in
9 very good condition

10 A. Yes, I think that e had talked about that
11 earlier in my testimony, that if the total loss vehicle
12 is very good, there ould be no condition ad ustment.

13 . Great. I must have missed that. I thought
14 e ere talking the same thing, but one of my uestions
15 regarding Ms. Fortson s report, if e can flip back to
16 that.

17 A. Okay.

18 . Are you there

19 A. Yes.

20 . And, again, this is Exhibit 9 e re looking
21 at

22 A. Correct.

23 . If Ms. Fortson on Garrison PC211, if her
24 vehicle as assessed very good condition in each of the
25 condition categories, is it your understanding that

1 ROBERT LOPEZ

2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

4 Civil Action No. 1:19-cv-00294-CCE-JLW

5
6 ELIZABETH V. FORTSON, et al.

7 Plaintiff,

8 vs.

9 GARRISON PROPERTY AND CASUALTY

10 INSURANCE COMPANY,

11 Defenant.

12
13 CONFIDENTIAL

14 Remote ZOOM Deposition of ROBERT LOPEZ

15 May 21, 2021

16 9:30 a.m. - 4:47 p.m.

17
18
19
20
21
22
23 REPORTED BY:

24 Steven Poulakos, RPR

25 JOB NO. 194290

ROBERT LOPEZ

The deposition of ROBERT LOPEZ as held via
Zoom videoconference on Friday, May 21, 2021,
commencing at 9:30 a.m., before Steven Poulakos, Notary
Public.

1 ROBERT LOPEZ

2 APPEARANCES:

3 ON BEHALF OF THE PLAINTIFFS:

4 JOHN DeSTEFANO, ESQUIRE

5 Hagens Berman Sobol Shapiro

6 11 West Jefferson

7 Phoenix, Arizona 85003

11 ON BEHALF OF THE DEFENDANT:

12 ALBERT LIN, ESQUIRE

13 Baker Hostetler

14 200 Civic Center Drive

15 Columbus, Ohio 43215

ROBERT LOPEZ

INDE

Deposition of ROBERT LOPEZ

May 21, 2021

Examination by:

Page

Mr. DeStefano

6

Exhibit No.

Marked

Exhibit 1 Notice of deposition

19

Exhibit 2 A conditioning matrix

103

Exhibit 3 A conditioning matrix

104

Exhibit 4 A conditioning matrix

107

Exhibit 5 The top of the document says USAA

119

total loss

Exhibit 6 CCC market valuation report

124

Exhibit 7 An orientation packet for ne total

164

loss reps

Exhibit 8 A survey

175

Exhibit 9 A consistency document

178

Exhibit 10 CCC training document

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Exhibit 11 A request for proposal

186

Exhibit 12 A CCC printed document dated

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November 2018 that is analyzing

potentially USAA data and providing

an analysis

ROBERT LOPEZ

Exhibit Index (Continued)

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Exhibit 13	A spreadsheet	192
Exhibit 14	North Carolina guidance on how insurance companies should value total loss claims	206

1 ROBERT LOPEZ

2 could say around the 2011 to 12 or 13 timeframe.

3 Is that a nationwide rule or just in North
4 Carolina

5 A I imagine it could be nationwide, but I
6 don't know for certain.

7 On the front page underneath the base
8 vehicle value, do you see here it says condition
9 adjustment

10 A I do.

11 What does that reflect

12 A That reflects that this vehicle received a
13 very good rating on a component. I don't know which
14 component. It doesn't have it, but it could show that
15 this vehicle did receive a very good rating at least on
16 one category showing that this vehicle was rated in
17 better than good condition in some way.

18 Paging through the document, can you show
19 me here that adjustment is reflected

20 A Yes, sir. Page 6 of 18.

21 Explain to me what is shown on page 6.

22 A Yes, sir. On page 6 is the breakdown of
23 the appraiser's assessment of the condition of this
24 particular car. So example or I'll talk through it.
25 The mechanical is rated very good because the

ROBERT LOPEZ

inspection notes reflect minor seepage. Belts and hoses show some wear. Method -- the classification of that to be rated very good. So when the appraiser notes that to be very good, CCC's market research and dealer survey equates that impact to be a \$130 positive.

The tires were rated good and the notes reflect a six tread average which equates to a zero dollar impact because it's the equivalent to an every day on the road vehicle meaning that the tires do have some wear. However, they're not in fair or very good condition. They're just in good condition.

If you want me to keep going, I can break down each one of these.

Just at a high level. Are these adjustments explained to the consumer in the report?

Absolutely. If the consumer would like an explanation, we could have that explanation. If the customer receives a report and fully understands it, they may not ask for clarification of these. It just depends as to whether the customer has questions or needs to be advised of how the value was arrived at.

Does USAA always provide the valuation report to consumers in North Carolina when there's a

ROBERT LOPEZ

total loss claim

A Yes.

And here in this report does it explain the nature of these condition adjustments

A I felt like page 6 does that. I might be missing the question, though.

Any here else You can look through it.

A (Reviewing document.)

So page 6 in its entirety. There's a note on the right-hand side which reads USAA uses condition inspection guidelines to determine the condition of key components of the loss vehicle prior to the loss. The guidelines describe physical characteristics for these key components for the condition selected based upon age.

Inspection notes reflect observations from the appraiser regarding the loss vehicle's condition. CCC makes dollar adjustments that reflect the impact the reported condition has on the value of the loss vehicle as compared to good condition. These dollar adjustments are based upon interviews with dealerships across the United States. Page 6 has notes on this vehicle and explains how those values are reflected.

Stand by as I flip through the rest of the

ROBERT LOPEZ

document, please. Page 1 of 18 under the ad used vehicle value subsection reads this is determined by adjusting the base vehicle value to account for the actual condition of the loss vehicle and certain other reported attributes, if any, such as refurbishments and after factory equipment.

So that is directly correlating the base vehicle value plus the condition adjustment as the base vehicle value plus condition adjustment equates to the 6,690 figure.

Page 2 of 18, claim inspection. USAA -- stand by one second. Page 2 of 18, claim inspection. USAA has provided CCC with the ZIP code where the loss vehicle is garaged, loss vehicle VIN, mileage, equipment, as well as loss vehicle condition which is used to assist in determining the value of the vehicle. So it appears that those three sections.

Looking at the front page, page 1 again, does this page reflect any information about condition adjustments to the comparable vehicles

A No, sir, not on this page.

Where could I find information about the condition adjustments to the comparable vehicles

A Yes, sir, please stand by. Page 7 of 18.

ROBERT LOPEZ

Last section on the blue side bar, the condition adjustment sets that comparable vehicle to good condition which is loss vehicle is also compared to in the vehicle condition section.

What is your understanding of what that language represents

A That language represents that a vehicle that is available for sale at a dealer facility could be rated in very good condition rating as a dealership could take effort, monetary resources, as well as labor to get that vehicle to be more appealing for the next consumer that is looking to purchase that used car. That vehicle is also not an every day use vehicle.

It is sitting at the dealer lot dealer ready with some refurbishments done to it to make it more appealing for the next consumer. Therefore, a vehicle at a dealer facility is in better than good condition which could then be reflected with an adjustment to get it -- to make it comparable to the loss vehicle in question.

Beyond what you've already read from this page, is there anything else in the valuation report that explains the nature of the condition adjustment

A Stand by. Yes. So the other reference

ROBERT LOPEZ

is -- the precursor to that section is preceded by a one. And so that one also is reflected on the comparable vehicles. So example if e flip to page 8 of 18 in the middle section of the report right next to condition also reflects that one. So it s driving the consumer to see here is the definition of condition adjustment. Here is condition ith a one calling it to the member s attention, that that reflects a minus 722 adjustment.

Is there any here else in the report here it explains hat the nature of the condition adjustment to comparable vehicles

A Based on my review right no , ust those two sections.

You gave a number of reasons hy USAA vie s the deduction as appropriate based on the ay that dealers prepare and maintain cars for sale on their lots, right

A Yes. John, I ant to add one more thing to your previous uestion, please. If I can amend my previous statement.

What is it

A Page 2 of 18 also calls that out under calculate base vehicle value and it reads adjustments

ROBERT LOPEZ

to the price of the selected comparable vehicle are made to reflect differences in vehicle attributes equal in mileage and options. Dollar adjustments are based upon market research.

Finally the base vehicle value is a straight average of the adjusted values of the comparable vehicles. So that is also giving insight to the vehicle owner or consumer that adjustments are made to make it comparable.

And going back to my previous question, though, you agree that you gave a number of reasons why USAA views the adjustment as appropriate because of the way dealers prepare and maintain their vehicles for sale, right

A Yes.

Are any of those reasons explained anywhere in this report

MR. LIN: Object to form.

Go ahead.

THE WITNESS: Beyond what I outlined in my previous answer

BY MR. DeSTEFANO:

Yes.

A Beyond those three sections, no, sir.

1 ROBERT LOPEZ

2 adjustment to them, right

3 MR. LIN: Object to form.

4 THE WITNESS: I'm still a little confused.

5 Can you restate the question a different way

6 BY MR. DeSTEFANO:

7 Going down to the condition adjustment on
8 page 8, you highlight that negative 722.

9 A Yes, sir.

10 That's the adjustment made reflecting the
11 condition of the comparable vehicles, right

12 A That is the adjustment made to the loss
13 vehicle because the comparable is in better condition
14 than the loss vehicle. Therefore, it's a negative
15 adjustment.

16 So the adjustment reduces the valuation of
17 the loss vehicle, correct

18 A Not necessarily. In this particular
19 example, it does because these vehicles are dealer
20 ready whereas the loss vehicle is in good condition
21 with the exception of the mechanical components.

22 But if this 722 deduction were removed,
23 then the valuation would be 722 higher, right

24 A If this section was removed, we would be
25 overpaying the member and not paying them what the

1 ROBERT LOPEZ

2 actual cash value of their loss vehicle is.

3 That as n t my uestion. My uestion is:
4 If the 722 is removed from this step of the process,
5 then the ultimate valuation ould be 722 higher,
6 right

7 A No.

8 MR. LIN: Ob ection.

9 THE WITNESS: That s not correct.

10 BY MR. DeSTEFANO:

11 Why isn t it correct

12 A I ll refer to page 1. On page 1, there as
13 a positive condition ad ustment up of 130. So it ould
14 be 722 mi nus 130.

15 I m not saying anything about the 130.
16 We re talking about the condition ad ustment to the
17 loss vehicle on page 6 is that correct

18 A That s correct.

19 So if the 130 is still included and the 722
20 is removed, the valuation amount ould increase by 722,
21 right

22 MR. LIN: Ob ect to form.

23 THE WITNESS: No.

24 BY MR. DeSTEFANO:

25 Why not

1 ROBERT LOPEZ

2 A It ould be approximately 590.

3 Are you subtracting 130 from 722

4 A Yes. May I explain hy

5 No. That s not my uestion. My uestion

6 is: If the 130 is still added to the base vehicle

7 value, but the 722 is not subtracted, then the base

8 vehicle value ould be still -- it ould be 722 less,

9 right

10 MR. LIN: Ob ect to form.

11 BY MR. DeSTEFANO:

12 Do you understand ho the base vehicle

13 value is calculated

14 A John, I d like to clarify for you if I can.

15 I m asking the uestion. Do you understand

16 ho the base vehicle value is calculated

17 A Yes.

18 You said earlier it s a straight average of

19 the values of the comparable vehicles, right

20 A Yes, sir.

21 So if the values of the comparable vehicles

22 as increased by 722, then that ould increase the

23 average of them by 722, right

24 MR. LIN: Ob ect to form.

25 THE WITNESS: I ans ered that uestion.

1 ROBERT LOPEZ

2 BY MR. DeSTEFANO:

3 I m sorry. What as your ans er

4 MR. LIN: Hold on. Ob ect to form.

5 Go ahead, Rob.

6 Maybe the court reporter can read that
7 back, the uestion.

8 (Reporter read back the record as re uested.)

9 THE WITNESS: No.

10 BY MR. DeSTEFANO:

11 Why not

12 A We gave credit to this member s -- for this
13 member s vehicle of 130. So if e re using this
14 example and e remove that 722, it ould increase the
15 value by 592.

16 I m not talking about the ad usted vehicle
17 value. You re still incorporating 130 into it. I m
18 talking about the base vehicle value hich is
19 calculated based on the average of the comparables.

20 A May I explain, John

21 No. I m asking the uestions. The base
22 vehicle value is the average of the comparables only.
23 So you calculate the base vehicle value before you look
24 at the loss vehicle condition. Removing that 722
25 ad ustment ill increase the base vehicle value by 722,

ROBERT LOPEZ

1
2 right

3 A No.

4 Do you believe that the 722 adjustment
5 does not reduce claim payments

6 A No.

7 No hat No, you don't believe that

8 A No, I don't believe that because the
9 adjusted vehicle value that you're referring to could
10 be impacted by the loss vehicle's condition and in this
11 case, it's impacted by it. If the member's vehicle
12 is rated very good down the line meaning it's in the
13 same condition as the dealers, you may see a 722
14 adjustment up. So it could be net zero.

15 It could be a net zero, but these are two
16 different adjustments, right

17 A No.

18 They're the same adjustment

19 A They are.

20 How is that possible

21 A If this member's vehicle is in very good
22 condition all the way down the line on page 6, there
23 could be a positive condition adjustment up of 722.

24 Where is that explained

25 A May I read page 6

1 ROBERT LOPEZ

2 You can review page 6.

3 A May I read it

4 Go ahead.

5 A USAA uses condition inspection guidelines
6 to determine the condition of key components of the
7 loss vehicle prior to the loss. The guidelines
8 described physical characteristics for these key
9 components for the conditions selected based upon age.
10 Inspection notes reflect observations from the
11 appraiser regarding the loss vehicle's conditions. CCC
12 makes dollar adjustments that reflect the impact that a
13 reported condition has on the value of the loss vehicle
14 as compared to good. These dollar adjustments are
15 based upon interviews with dealerships across the
16 United States.

17 I didn't hear you explain anything about
18 how the value impacts could add up to 722.

19 A The mechanical is rated at very good and
20 received a positive 130 up. If the tires were rated as
21 very good, there could be a positive condition up. If
22 the paint was rated very good, there could be a
23 positive adjustment up. If body was rated very good,
24 positive adjustment up. Glass, positive adjustment up.
25 Interior, positive adjustment up. If they were already

1 ROBERT LOPEZ

2 very good, there could be a 722 positive adjustment
3 which could equate to a net zero for that dollar
4 adjustment to those comparables.

5 That is sufficiently explained in the report
6 is that you understand, right

7 MR. LIN: Object to form, argumentative.

8 THE WITNESS: Total loss reps could explain
9 that to members if the member has questions and allows
10 for us to explain it to them.

11 BY MR. DeSTEFANO:

12 So what is the amount that could be added
13 to the tires if there was a positive value impact that
14 could add up to 722 What is the tires component of
15 that

16 A May I read the description again

17 No. I want you to give me the amount of
18 the adjustment that could apply to tires in very good
19 condition.

20 MR. LIN: You don't have to answer that,
21 Rob. That is all outside the scope of all of these
22 topics. So asking for a specific dollar amount for a
23 specific condition adjustment for a specific car is not
24 possible to prep any witness regarding that level of
25 detail, so --

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claims. So I don't know if I can give you a list of scenarios, but either or could invoke it. If we're at an impasse, invoking it will help resolve the dispute.

How often would you say the appraisal clause is invoked

MR. LIN: Object to form.

THE WITNESS: I don't know. I don't have that. I don't have context of what that would look like, timeframe, state. I don't know. I don't know.

BY MR. DeSTEFANO:

Well, in the last -- since 2015 or so in North Carolina, do you have an understanding of roughly how often the appraisal clause is invoked

A No. I don't have that and I don't know if we could collect that data either.

In your experience handling total loss claims, do you remember if it was more than half the time or less than half the time

A I would be surprised if it's more than 5 percent of the time.

Does Garrison regard appraisals as an accurate way to determine the value of vehicles

MR. LIN: Object, form.

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2 THE WITNESS: I think the use of CCC is an
3 accurate way of determining value. However, the member
4 or USAA could deem it to be an appropriate -- an
5 accurate way of determining value. It's just -- it's a
6 difficult question. I don't know.

7 BY MR. DeSTEFANO:

8 Does Garrison have any studies of how often
9 appraisals occur

10 A No, not that I'm aware of.

11 Has Garrison ever conducted a study
12 comparing appraised value to CCC's valuations

13 A No, not that I'm aware of.

14 Does Garrison maintain a list of the
15 appraisers that it uses for North Carolina total loss
16 claims

17 A No, I haven't seen one.

18 Does Garrison keep any kind of list of
19 payments made to appraisers for North Carolina claims

20 A No, I'm not aware of one.

21 Moving back to the relationship with CCC.
22 How does Garrison compensate CCC for its total loss
23 valuation service

24 A USAA is billed monthly. We receive a flat
25 rate monthly for services that they provide. The flat

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

ERIC PRUDHOMME, ET AL.	CIVIL ACTION NO. 15-0098
VERSUS	JUDGE TERRY A. DOUGHTY
GEICO INSURANCE CO., ET AL.	MAG. JUDGE PATRICK J. HANNA

RULING

Pending here are two related motions: Defendants Government Employees Insurance Company and GEICO General Insurance Company’s (collectively “GEICO Defendants”) Motion to Exclude the Opinions of Johnette Hassell (“Motion to Exclude”) [[Doc. No. 180](#)] and Plaintiffs Eric Prudhomme and Elvin Jack’s Amended Motion for Class Certification [[Doc. No. 183](#)]. Plaintiffs oppose the GEICO Defendants’ Motion to Exclude, and GEICO opposes Plaintiffs’ Amended Motion for Class Certification.

The Court has reviewed the parties’ briefs, the exhibits, and all other evidence. An evidentiary hearing was held on November 9-11, 2020, in the United States District Courthouse, Lafayette, Louisiana.

For the following reasons, GEICO Defendants’ Motion to Exclude is DENIED. Plaintiffs’ Amended Motion for Class Certification is DENIED.

I. FINDINGS OF FACT AND PROCEDURAL HISTORY

This case involves the “valuation” that two GEICO entities, Government Employees Insurance Company and GEICO General Insurance Company, placed on vehicles determined to be total losses. Two insureds, Plaintiffs Eric Prudhomme (“Prudhomme”) and Elvin Jack

(“Jack”), contend that the GEICO Defendants undervalued their vehicles when they made claims for their respective total losses.

Prudhomme’s 2008 Kia Rondo LX was involved in an automobile accident in Lafayette Parish. The Kia was so severely damaged that the estimates to repair the vehicle rendered it a total loss. Prudhomme made a claim against the collision coverage of his automobile policy written by Government Employees Insurance Company. NADA Valuation Reports for Prudhomme’s vehicle estimated its clean retail value at \$10,150.00. The GEICO entity did not use NADA value, but instead used a product developed by a third party valuation service, the “CCC One Market Valuation Report,” which set the “base vehicle value” for Prudhomme’s vehicle at \$8,272.00.

Jack’s vehicle, a 2000 Ford Ranger V-6 Supercab truck garaged in Ville Platte, was severely damaged in an accident. He filed a claim against the collision coverage of his automobile policy with GEICO General Insurance Company. The estimates to repair the vehicle rendered it a total loss. NADA Valuation Reports for Jack’s vehicle estimated its clean retail value as \$4,350.00. Also using the CCC One Market Valuation Report, the GEICO entity established the “base vehicle value” at \$2,801.00 and deducted \$43.00 for condition adjustment and \$25.00 for prior damage, to arrive at an adjusted vehicle value of \$2,733.00.

Plaintiffs allege that the GEICO Defendants’ use of the CCC system violates Louisiana statutory law. Specifically, Plaintiffs allege that the GEICO Defendants’ use of the CCC system violates LA. REV. STAT. 22:1892(B)(5), which provides:

(5) When an insurance policy provides for the adjustment and settlement of first-party motor vehicle total losses on the basis of actual cash value or replacement with another of like kind and quality, and the insurer elects a cash settlement based on the actual cost to purchase a comparable motor vehicle, such costs shall

be derived by using one of the following:

- (a) A fair market value survey conducted using qualified retail automobile dealers in the local market area as resources. If there are no dealers in the local market area, the nearest reasonable market can be used.
- (b) The retail cost as determined from a generally recognized used motor vehicle industry source; such as, an electronic database, if the valuation documents generated by the database are provided to the first-party claimant, or a guidebook that is available to the general public. If the insured demonstrates, by presenting two independent appraisals, based on measurable and discernable factors, including the vehicle's preloss condition, that the vehicle would have a higher cash value in the local market area than the value reflected in the source's database or the guidebook, the local market value shall be used in determining the actual cash value.
- (c) A qualified expert appraiser selected and agreed upon by the insured and insurer. The appraiser shall produce a written nonbinding appraisal establishing the actual cash value of the vehicle's preloss condition.
- (d) For the purposes of this Paragraph, local market area shall mean a reasonable distance surrounding the area where a motor vehicle is principally garaged, or the usual location of the vehicle covered by the policy.

Plaintiffs argue that the GEICO Defendants' use of the CCC system does not meet the statutory standard and systematically undervalues the claims of similarly situated policy holders.

During the class period, the GEICO Defendants (both entities) used two products from CCC: (1) one product was used to estimate the costs of repairs to insureds' damaged vehicles, and (2) the second product was used to determine the amount GEICO would pay as the actual cash value of the insured vehicle if there was a total loss. [Doc. No. 186-2, Exhibit 6, Deposition of CCC through John Gintvainis, pp. 84-85; Exhibit 7, Deposition of Louiviere, p. 47; Deposition of Simon, pp. 37-38].

After the GEICO Defendants were informed of a loss, an adjuster would visit the damaged vehicle (if available) and input basic data, such as the VIN and mileage, into the CCC

One system. The adjuster would inspect and take pictures of the damage. The adjuster would then input which damaged parts needed repair and replacement, and the estimating system determined the cost of repair. When damage estimates reached a certain percentage of the NADA value, a trigger was met, and the adjuster was then informed to make the determination of actual cash value of the vehicle and whether the vehicle was a total loss under Louisiana law. Adjusters would consult a NADA guidebook (either online or through an app available to the public) to determine the NADA value of the insured vehicle.

Louisiana law requires NADA values to be used to determine whether a vehicle is a total loss. LA. REV. STAT. 32:702(11). If the cost of the repairs exceeded 75% of NADA “clean retail,” the vehicle was deemed a total loss pursuant to Louisiana law. The NADA value was sometimes saved in the GEICO Defendants’ claim file system, but any available NADA value was always saved in the CCC system.

If a vehicle was deemed a total loss under Louisiana law, the GEICO Defendants did not use the NADA value for the vehicle, but used a different product from CCC, CCC One Market Valuation Report, to determine the amount it would pay an insured for her totaled vehicle. The CCC One Market Valuation Report is not available to the general public, but is used by insurance companies and collision repair shops that perform appraisals on behalf of insurance companies. Governmental units also use the product to value fleets or determine the value of a particular vehicle.

The CCC One Market Value Report methodology is a “four step” process which includes the identification of the loss vehicle, “configuration” of the lost vehicle, search for and adjustment for comparables, and then a determination of the final amount. The first step is for

the insurance carrier to identify the vehicle through either the VIN or, lacking the VIN, information directly from the insurance carrier, such as the year, make, model, trim, level, body style, and engine size of the loss vehicle and submit that information to CCC.

The second step is for CCC to configure the loss vehicle by looking at information from the insurer regarding equipment, packages, mileage, condition, and refurbishments of the loss vehicle. CCC will also load all standard equipment on the loss vehicle.

At the third step, the CCC product searches for comparable vehicles in various databases.

That search is [REDACTED]
[REDACTED]. (Before late 2015 or early 2016, [REDACTED]
[REDACTED]). [REDACTED]
[REDACTED].

The values of the comparables are “adjusted” for differences in configurations (package, trim, options) between the loss vehicles and the comparables. [REDACTED]

[REDACTED]. [REDACTED]
[REDACTED]
[REDACTED]. Additionally, there is a mileage adjustment for vehicles [REDACTED]. Instead of taking an average of adjusted comparable values, CCC, for the GEICO Defendants, “weights” the comparables. More “adjustments” occur after “weighting,” based on a four-condition scale to judge the condition of the loss vehicle: rough, average private, dealer, and exceptional. The GEICO Defendants conditioning is set that vehicles with average private condition do not have any dollar impact for conditioning. [REDACTED]

██████████. This is a “monetary adjustment for the difference between a dealer-conditioned vehicle and one in the baseline or private owner-conditioned vehicle of the loss.”

The fourth step is for the GEICO Defendants to reach a determination of the final amount to be paid to the insured.

However, as discussed more fully in analyzing the requirements of class certification below, testimony at the hearing and evidentiary submissions show that GEICO adjusters did not always use the CCC valuation to pay a total loss to customers. Troy Penry, GEICO’s Assistant Vice President of Auto Damage Claims, who has been employed by GEICO for more than 25 years and who himself worked as an adjuster in Louisiana, testified that “each claim is handled differently” and that there are “several subjective factors” to the valuation process. Tr. (Penry) 551:1-5, 551:12-17, 558:24-25. His testimony was consistent with that of Daniel Stelly, GEICO’s field claims manager with responsibility over most of Louisiana, who testified that there is no exact form or process. Tr. (Stelly) 25:24-26:9. Instead, adjusters had discretion and actually exercised that discretion in a statistically significant number of cases to adjust the CCC valuation in paying a total loss amount to customers.

Plaintiffs seek to represent a claim composed of “All persons insured by GEICO General Insurance Company and Government Employees Insurance Company who have made a claim for first party total loss, which claim GEICO evaluated using CCC One Market Valuation, or a predecessor product, from August 15, 2010 to the present date [date of class action notice.]” [Doc. No. 183]. They further move that Prudhomme and Jack be appointed as class representatives. *Id.* They also seek to have Plaintiffs’ counsel, J. R. Whaley; Kenneth D. St. Pé; Stephen B. Murray, Sr.; Stephen B. Murray, Jr.; Arthur M. Murray; and Kenneth W. DeJean

appointed as class counsel. In support of their motion, Plaintiffs rely, in part, on the expert analysis of Dr. Johnette Hassell.

The GEICO Defendants oppose class certification. They also move to exclude Dr. Hassell’s testimony.

II. LAW AND ANALYSIS

A. Motion to Exclude

The Court deferred ruling on GEICO Defendants’ Motion to Exclude until after the hearing. However, prior to proceeding any further the Court must first address whether it may properly rely on the opinions expressed by Plaintiffs’ expert, Dr. Hassell.

Under Federal Rule of Evidence 702, an expert opinion on scientific, technical, or specialized knowledge can be admitted only if:

- (a) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

FED. R. EVID. 702. When faced with expert scientific testimony, the court must determine at the outset if the proponent of the evidence has proven its admissibility by a preponderance of the evidence. *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579, 592 n.10 (1993) (citing FED. R. EVID. 104(a) and *Bourjaily v. U.S.*, 483 U.S. 171, 175-76 (1987)). Courts have considerable discretion in deciding whether to admit or exclude expert testimony. *See Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152 (1999) (“[W]e conclude that the trial

judge must have considerable leeway in deciding in a particular case how to go about determining whether particular expert testimony is reliable.”); *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 138-9 (1997).

However, as gatekeeper, the district court is not intended to replace the adversary system: “Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence.” *United States v. 14.38 Acres of Land, More or Less Situated in Leflore County, Miss.*, 80 F.3d 1074, 1078 (5th Cir. 1996) (quoting *Daubert*, 509 U.S. at 596).

In determining whether to allow expert opinion testimony, a court must first decide whether the witness is qualified as an expert by knowledge, skill, experience, training, or education. *See Moore v. Ashland Chemical, Inc.*, 126 F.3d 679, 684 (5th Cir. 1997). A district court should refuse to allow an expert witness to testify if it finds that the witness is not qualified to testify in a particular field or on a particular subject. *Wilson v. Woods*, 163 F.3d 935 (5th Cir. 1999).

If a witness is qualified to testify, the court must then determine whether the proffered testimony is both relevant and reliable. Reliability and relevance, under Rule 702, are the hallmarks of admissible expert testimony. *Daubert*, 509 U.S. at 589; *In re MBS Mgmt. Servs., Inc.*, 690 F.3d 352, 357 (5th Cir. 2012). In making its reliability determination, the court must assess whether the “reasoning or methodology underlying the testimony is scientifically valid.” *Curtis v. M & S Petroleum, Inc.*, 174 F.3d 661, 668 (5th Cir. 1999). However, the focus of reliability “must be solely on principles and methodology, not on the conclusions they generate.” *Daubert*, 509 U.S. at 595.

Relevance includes not only the general requirement contained in Rule 401 that the testimony tend to make the existence of any fact more probable or less probable, but also the prerequisite that the expert testimony “assist the trier of fact to understand the evidence or to determine a fact in issue.” FED. R. EVID. 702; *Daubert*, 509 U.S. at 591 (“Expert testimony which does not relate to any issue in the case is not relevant and, ergo, non-helpful.”) (quoting 3 J. WEINSTEIN & M. BERGER, *WEINSTEIN’S EVIDENCE* ¶ 702[02], p. 702-18 (1988)). In assessing relevance, courts “must determine whether that reasoning or methodology can be properly applied to the facts in issue.” *Id.* (citing *Daubert*, 509 U.S. at 592-93).

Ultimately, “[t]he district court’s responsibility is ‘to make certain that an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field.’” *Pipitone v. Biomatrix, Inc.*, 288 F.3d 239, 247 (5th Cir. 2002) (quoting *Kumho Tire Co.*, 526 U.S. at 152).

In this case, the GEICO Defendants do not challenge Hassell’s general qualifications as an expert, but rather argues that “her opinions do not meet the standards required for admission, as set forth under Federal Rules of Evidence 104(b)¹, 401(a), 403, and 702, and the principles in *Daubert* . . . and its progeny.” [Doc. No. 180]. The GEICO Defendants further contend that Dr. Hassell’s opinions should be excluded “because they do not meet the standards set forth in *Chavez v. Plan Benefit Servs., Inc.*, 957 F.3d 542 (5th Cir. 2020)[,] and *Comcast Corp. v. Behrend*, 569 U.S. 27 (2013).” *Id.*

¹Federal Rule of Evidence 104(b) provides: “When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court may admit the proposed evidence on the condition that the proof be introduced later.”

Having heard the evidence adduced at the hearing, further elucidating the parties' positions, the Court finds that Dr. Hassell's opinions are properly admitted. The GEICO Defendants, as stated, do not challenge Dr. Hassell's qualifications or that she has testified as an expert in other cases. Further, Dr. Hassell explained the technical methodology she used for valuing total losses. Her analysis and testimony are admissible as offered.

The GEICO Defendants' real objection is that Dr. Hassell's comparison is incorrect and does not address all information that the GEICO Defendants rely upon in valuing total losses. That objection is addressed by the cross-examination of Dr. Hassell at her deposition and by presenting their own evidence and testimony at the class certification hearing. The Motion to Exclude is DENIED. The Court has considered Dr. Hassell's testimony in ruling on the Amended Motion for Class Certification.

B. Amended Motion for Class Certification

The Court now turns to the class certification issue. Applying Federal Rules of Civil Procedure 23(a) and (b)(3) factors, Plaintiffs argue that the Court should find, as its sister courts did in *Slade v. Progressive Security Insurance Co.*, No. 11-2164, 2014 WL 6484588 (W.D. La. Oct. 31, 2014), rev'd and remanded, 856 F.3d 408 (5th Cir. 2017), and *Gautreaux v. Louisiana Farm Bureau*, 2019-17 (La. App. 3rd Cir. 10/2/19), 280 So. 3d 694, 709, writ denied 2019-01782 (La. 6/03/20), – So.3d –, that certification is appropriate.

The GEICO Defendants contend that Plaintiffs have failed to meet their burden on the Rule 23 requirements, and the Amended Motion for Class Certification must be denied.

The class action is “an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only.” *Califano v. Yamasaki*, 442 U.S. 682, 700–701, 99 S.Ct. 2545, 61 L.Ed.2d 176 (1979). To come within the exception, a party seeking to maintain a class action “must affirmatively

demonstrate his compliance” with Rule 23. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. —, —, 131 S.Ct. 2541, 2551–2552, 180 L.Ed.2d 374 (2011).

Comcast Corp. v. Behrend, [569 U.S. 27, 33](#) (2013). “Rule 23(a) ensures that the named plaintiffs are appropriate representatives of the class whose claims they wish to litigate.” *Dukes*, [564 U.S. at 349](#). Rule 23(a) has four requirements: numerosity, commonality, typicality, and adequate representation. [FED. R. CIV. P. 23\(a\)](#); *see also Dukes*, [564 U.S. at 349](#). If these prerequisites are met, then a class may be certified if the moving party also meets the requirements of Rule 23(b)(1), (b)(2), or (b)(3) for class type. Rule 23(b)(3), at issue in this case, provides that the Court must find

that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

- (A) the class members' interests in individually controlling the prosecution or defense of separate actions;
- (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
- (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- (D) the likely difficulties in managing a class action.

FED. R. CIV. P. 23(b)(3).

The Fifth Circuit has instructed on the proper standard for certification under Rule 23:

Certification is proper only where “the trial court is satisfied, after a rigorous analysis,” . . . that the Rule’s requirements are met. Put another way, “a district court must detail with sufficient specificity how the plaintiff has met the requirements of Rule 23.” *Vizena v. Union Pac. R.R.*, 360 F.3d 496, 503 (5th Cir. 2004) (per curiam).

This “rigorous analysis” mandate is not some pointless exercise that we foist on this circuit’s hardworking and conscientious district judges, such as the judge in this case. It matters. A “class action is an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only,” *Behrend*, 569 U.S. at 33, 133 S.Ct. 1426 (quotation marks removed), and creative uses are perilous. It is no secret that certification “can coerce a defendant into settling on highly disadvantageous terms regardless of the merits of the suit.” . . . And the existence of a class fundamentally alters the rights of present and absent members, particularly for mandatory classes such as the one here. . . . No less than due process is implicated, so a careful look is necessary. *See Unger v. Amedisys Inc.*, 401 F.3d 316, 320 (5th Cir. 2005).

Chavez v. Plan Benefit Servs., Inc., 957 F.3d 542, 545–48 (5th Cir. 2020) (citations omitted).

The duty under GEICO's insurance agreement is to pay the actual cash value of the loss vehicle in its pre-loss condition. Exh. 63, Prudhomme Insurance Agreement, 11. This value includes adjustments for the "physical condition of the" loss vehicle and for "depreciation/betterment." *Id.* at 17-18. Thus, for the breach of contract claim, Plaintiffs must prove the settlement amount was less than the actual cash value of the loss vehicle, after all adjustments.

1. Numerosity

First, numerosity requires the examination of the specific facts of each case and imposes no absolute limitations. *See Gen. Tel. Co. of the Northwest, Inc. v. EEOC*, 446 U.S. 318, 329 (1980). There are no magic numbers. *See Phillips v. Joint Legis. Committee on Performance and Expenditure Review of the State of Miss.*, 637 F.2d 1014, 1022 (5th Cir. 1981) (“Ample case law can be cited to show that smaller classes have been certified and larger ones denied certification for lack of numerosity. . . Such number comparisons miss the point of the Rule. The proper focus is not on numbers alone, but on whether joinder of all members is practicable in view of the numerosity of the class and all other relevant factors.”).

The interrogatories filed by the GEICO Defendants (Exhibit 55) show that from August 15, 2010-January 9, 2019, Government Employees Insurance Company adjusted 4,352 total losses for insureds whose policies were issued in Louisiana. GEICO General Insurance Company adjusted 8,920 total loss claims for insureds whose policies were issued in Louisiana. In total, the GEICO Defendants adjusted 13,272 total claims.

The GEICO Defendants concede that the total claims are sufficiently numerous to meet the numerosity requirements. However, the GEICO Defendants argue that Plaintiffs cannot prove that the number of insureds in the 13,272 claims that were allegedly harmed under Plaintiffs' theory of liability. The GEICO Defendants presented testimony from Kathy Simon and David Stelly, both of whom testified that adjusters have discretion and did not always pay the CCC value, but actually pay a higher amount than the CCC value approximately [REDACTED] of

However, even under the GEICO Defendants' argument [REDACTED], there would still be a sufficient number of potential claims to meet the numerosity factor. Therefore, the Court finds that Plaintiffs have met their burden as to numerosity.

The Court next turns to the factor of commonality. Commonality allows a class to be maintained if there are questions of law or fact common to the class. FED. R. CIV. P. 23(a)(2). “The commonality test is met when there is at least one issue, the resolution of which will affect all or a significant number of the putative class members.” *Lightbourn v. County of El Paso*, 118 F.3d 421, 426 (5th Cir. 1997); *see also Slade*, 2014 WL 6484588, at *7 (quoting same).

- Whether GEICO's use of CCC violates LA. REV. STAT. 22:1892(B)(5);
- Whether CCC's algorithm driven comparable methodology is a "fair market value survey conducted using qualified retail automobile dealers in the local market area as resources" pursuant to LA. REV. STAT. 22:1892(B)(5)(a);
- Whether CCC's algorithm driven comparable methodology is a "generally recognized used motor vehicle industry source" pursuant to LA. REV. STAT. 1892(B)(5)(b);
- Whether the use of a system that violates LA. REV. STAT. 22:1892(B)(5) gives rise to penalties under LA. REV. STAT. 22:1973; and

- The criteria for individual class members' entitlement to damages and penalties under LA. REV. STAT. 22:1892 and LA. REV. STAT. 22:1973.

[[Doc. No. 183-1, p. 18](#)]. The first three issues all address the question of whether GEICO's use of the CCC value violates the provision of [La. Rev. Stat. 22:1892\(B\)\(5\)](#). The fourth and fifth issues address whether each proposed claimant would be entitled to penalties and attorneys' fees under [La. Rev. Stat. 22:1973](#) and [La. Rev. Stat. 22:1892](#) in the event GEICO's use of the CCC values violates [La. Rev. Stat. 22:1892\(B\)\(5\)](#).

In *Slade v. Progressive*, [2014 WL 6484588](#) (W.D. La. Oct. 13, 2014), the District Court certified a very similar class action involving Progressive’s use of the Work Center Total Loss (“WCTL”) valuation system for total vehicle of Progressive insureds. The District Court certified issues for the class involving the breach of the insurance contract, statutory penalties, and attorneys’ fees under [La. Rev. Stat. 22:1973](#) and fraud. On appeal, the Fifth Circuit approved the class certification on those issues except for fraud.² See *Slade v. Progressive*, [856 F.3d 408](#) (5th Cir. 2017).

Slade has many similarities to the present case. It involved a class of Progressive insureds who had total losses calculated with the WCTL system that allegedly undervalued the insured's loss. *Slade* was also similar to the present case in that the NADA clean-retail was used by the plaintiffs' expert, Hassell,³ who testified that damages could be computed on a class-

²The Court held that fraud claims require individual proof of reliance by each claimant, and, therefore, certification was inappropriate.

³Hassell is the same expert in this case.

wide basis by computing the difference between the NADA lean rated value and the WCTL value by using Progressive’s own information.⁴

However, there are some very important differences between *Slade* and the present case. Progressive used Manage Repair Representatives (“MRR”), who did not have discretion to deviate from the WCTL numerical value. In contrast, GEICO’s adjusters have extensive training which includes the discretion to settle total loss claims over the CCC value. According to the testimony of Kathy Simon, [REDACTED] [REDACTED]. Since Progressive always used the WCTL value, there was no need to look at each individual claim to see which claimants received more. Dr. Hassell’s damage model would fit more easily with the Progressive case than it would with GEICO’s case.

Another important difference between *Slade* and the present case is that the Progressive adjusters were also able to determine the vehicle’s NADA value by pressing an “NADA button” on his or her computer. In contrast, the GEICO adjusters do not track the NADA clean retail value, and that information is not normally found in GEICO’s claim files.

One other important difference is the value Progressive was computing versus the value GEICO is computing. In *Slade*, the WCTL program had a condition rating of 3.00, which compared to the condition of a used vehicle on a dealer’s lot. In contrast, GEICO’s CCC program attempts to calculate the actual cost value of the vehicle in the state where it was located just prior to the accident causing the loss. Therefore, in *Slade*, the use of Dr. Hassell’s model is an “apples versus apples” comparison (used vehicle on dealer’s lot versus clean retain value). In the present case, her damages model is an “apples versus oranges” comparison because

⁴The Court notes that there is currently an issue in *Slade* as to whether the damages were as easy to calculate as Hassell had previously indicated.

NADA clean retail reflects the value of a used vehicle for sale on a dealer's lot versus the actual cost of the insured vehicle just before the accident.⁵ Dr. Richardson testified that a vehicle on the road just prior to an accident would almost always be valued less than a used vehicle for sale on a dealer's lot.

Since GEICO pays more than the CCC value in approximately [REDACTED] of its claims, all 13, 272 potential claims would have to be looked at individually to determine whether or not the CCC value was paid. Additionally, in approximately [REDACTED] of cases where the CCC system is used, the system evaluations are reviewed by a person [REDACTED] or the evaluations are prepared manually [REDACTED] by CCC adjusters. Each individual claim will have to be looked at to find out in which claims GEICO paid more and/or in which claims manual valuations were used by CCC. Unlike *Slade*, Prudhomme's and Jack's claims cannot be resolved by reference to GEICO's own computer data.

In *Chavez v. Plan Benefit Servs., Inc.*, 957 F.3d 542 (5th Cir. 2020), the Court found the district court failed to meet the rigorous analysis required for class certification. Specifically, the Court held the district judge failed to examine the asserted differences among the class members that could prevent the suit from generating common answers.

There are important differences between the GEICO insureds proposed to be class plaintiffs. Apparently, [REDACTED] were paid more than the CCC. Also, apparently [REDACTED] had manual evaluations used, rather than the CCC computer system. It would be impossible to determine damages on a class-wide basis without examining all 13,272 claims. Common questions could not be answered without fact-specific inquiries as to each claim.

⁵NADA Clean Retail reflects a used vehicle on a dealer's lot ready for sale. (Dr. Richardson's testimony).

GEICO maintains the plaintiffs are in conflict with each other, and Jack is subject to unique individual defenses. Despite that, Prudhomme and Jack seek to represent GEICO insureds whose total loss vehicles were paid less than the NADA clean retail value. The small differences are not enough to defeat typicality.

Under the adequacy argument, Plaintiffs must show that they, their counsel, and the relationship between the two are adequate to protect the interests of the absent class members. *Unger v. Amedisys, Inc.*, [401 F.3d 316, 321](#) (5th Cir. 2005).

GEICO argues that Prudhomme and Jack have a conflict of interest due to Dr. Richardson's conclusion that more than one-fifth of the putative class benefited from GEICO using the CCC value instead of NADA Clean Retail value. In other words, Prudhomme and Jack have a conflict of interest in that the method they contend should have been used would be to the detriment of more than 20% of the putative class.

Sys. Corp., 476 F.3d 299, 315 (5th Cir. 2007). In *Pickett v. Iowa Beef Processors*, 209

5. Rule 23(b) Class Type Requirements

that the action meets the requirements of one of the options under Rule 23(b). In this, Plaintiffs

predominate over any questions affecting only individual members, and that a class action is

- (A) the class members' interests in individually controlling the prosecution or defense of separate actions;
- (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;

- (D) the likely difficulties in managing a class action.

warrant adjudication by representation.” *Unger*, 401 F.3d at 320.

the issues in this case and *Slade v. Progressive*, the commonality requirement was not met.

Under the more demanding standard of predominance, this requirement is not met either. Since

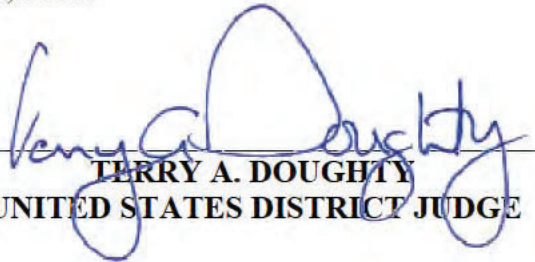
Also, without knowing the amount each potential GEICO claimant was paid over the

Although this case is similar to *Slade v. Progressive*, a “rigorous analysis” of the facts

III. CONCLUSION

For the foregoing reasons, Defendants' Motion to Exclude [Doc. No. 180] is DENIED. Plaintiffs' Amended Motion for Class Certification [Doc. No. 183] is DENIED. As a result of the Court's Ruling, it appears there is no longer subject-matter jurisdiction. It is, therefore, the intent of the Court to remand this matter to the Fifteenth Judicial District Court, Parish of Lafayette, State of Louisiana. Accordingly, any party opposing remand should file a memorandum no later than fifteen (15) days from the date of this Order.

Monroe, Louisiana, this 22nd day of December, 2020.


TERRY A. DOUGHTY
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No. 1:19-CV-00294-CCE-JLW

ELIZABETH V. FORTSON.

Plaintiff,

v.

GARRISON PROPERTY AND
CASUALTY INSURANCE COMPANY.

Defendant.

DECLARATION OF JOHN BECK

I, John Beck, pursuant to 28 U.S.C. § 1746 declare:

1. I make this declaration based on personal knowledge. I could competently testify to the facts stated in this declaration if called upon to do so.
2. I am currently the Manager of Content Strategy for Cox Automotive, Inc., parent company of Kelley Blue Book Co., Inc. ("KBB") I provide services directly to KBB and have worked as their copywriter and content strategist for 11 years.
3. As part of those services, I maintain and periodically update a list of existing terms & definitions used on the site for the purposes of clarity and consistency.
4. I have personal knowledge of and am familiar with the text of the KBB web pages attached hereto.
5. Exhibit 1 attached hereto is a true and accurate depiction of the web page located at <https://www.kbb.com/car-prices/> as of September 27 2021.
6. Exhibit 2 attached hereto is a true and accurate depiction of the web page located at <https://www.kbb.com/company/terms-of-service/> as of September 27, 2021.
7. Exhibit 3 attached hereto is a true and accurate depiction of the web page located at <https://www.kbb.com/faq/ico/as> of September 27, 2021.
8. Exhibit 4 attached hereto is a true and accurate depiction of the web page located at <https://www.kbb.com/faq/new-cars/> as of September 27, 2021.

9. Exhibit 5 attached hereto is a true and accurate depiction of the web page located at <https://www.kbb.com/faq/used-cars/> as of September 27, 2021.
10. Exhibit 6 attached hereto is a true and accurate depiction of the web page located at <https://www.kbb.com/faq/values/> as of September 27, 2021.
11. Exhibit 7 attached hereto is a true and accurate depiction of the web page located at <https://www.kbb.com/faq/others/> as of September 27, 2021.
12. Exhibit 8 attached hereto is a true and accurate depiction of the web page located at <https://www.kbb.com/used-cars/> as of September 27, 2021.
13. Exhibit 9 attached hereto is a true and accurate depiction of the web page located at <https://www.kbb.com/whats-my-car-worth/?ico=a> as of September 27, 2021.
14. Exhibit 10 attached hereto is a true and accurate depiction of the vehicle Condition Descriptions on the KBB website as of September 27, 2021.
15. To view the Condition Descriptions in Exhibit 10, a user must input basic information about the vehicle that they are attempting to value. The vehicle information will then appear on the webpage inquiring about vehicle condition with the Condition Descriptions. KBB uses the same Condition Descriptions for all vehicles. The percentages applied to each condition is across all vehicles valued by KBB.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration is executed on September 27, 2021 in Torrance, State of California.


John Beck

EXHIBIT 1

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we make it easy
SALES EVENT

Car Prices

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☐ Price New/Used
 ☐ Search by Price

Year
 Make
 Model
 ZIP Code

See how much you can save today.

Cars You May Like

We've rounded up cars that could be your perfect match.

New 2022 Toyota Prius
\$34,967

Moss Bros. Toyota

New 2022 Toyota Prius XLE
\$30,841

Moss Bros. Toyota

New 2022 Toyota Prius XLE
\$30,561

Manhattan Beach Toyota

New 2022 Toyota Prius
\$26,341

Manhattan Beach Toyota

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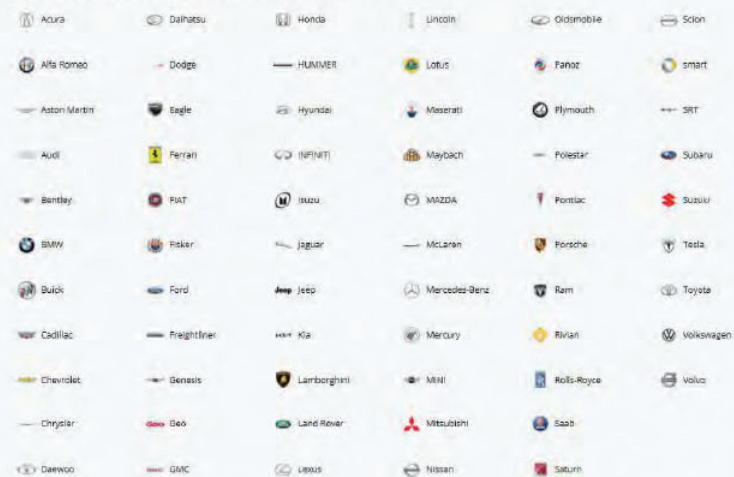
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Other Categories

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About Kelley Blue Book Car Prices

No one has more experience with Car Prices than Kelley Blue Book. Whether you're interested in new car prices, certified used car prices (aka Certified Pre-Owned or CPO) or used car prices, we use over 90 years of knowledge to tell you what you should

expect to pay for your next car. We call it the Kelley Blue Book® Price Advisor. It shows you the Kelley Blue Book® Fair Purchase Price, Kelley Blue Book® Fair Market Range and other pricing details to give you a real look at what a car should cost in your area. To help you with a fair car price, we update or validate our data weekly to provide market-reflective prices, relied upon by both consumers and the automotive industry.

Car Pricing Questions

What is the Kelley Blue Book Price Advisor?

The Kelley Blue Book® Price Advisor is a range-based pricing tool to help car buyers and sellers talk about price realistically. Research from a recent Coi Automotive Car Buying Journey Study showed that shoppers are looking for a fair car price not only for new vehicles, but also for used vehicles and the vehicles they currently own. Focusing on a single price doesn't consider all the variables associated with structuring a car deal. The Kelley Blue Book® Price Advisor is designed to reduce friction between buyers and sellers.

How are car prices determined?

Kelley Blue Book has its own special formula, perfected over 90+ years of experience with car prices. Today, we look at hundreds of thousands of vehicle transactions each week and factor in items like supply & demand and seasonality. And because car prices aren't the same across the country, we have car pricing based on over 120 geographic regions in the US and analyze each region individually to reflect local pricing and economic conditions. We even tell you if the asking price that the dealer provides to us is a "Great Price" or a "Good Price" so you can feel more confident when you make your deal.

How to get the best price on a new or used car?

- If you have a trade-in, learn the value of your current car.
- Determine a monthly payment and a term that works for you.
- Get pre-qualified for a car loan from your bank or credit union. Sometimes dealers can beat the rate you find; sometimes not.
- Know the Fair Market Range to be sure you don't overpay.
- If it's a new car, negotiate with a few dealerships online for the best price.

For more, see "10 Insider Tips for Car Buying."

Are Kelley Blue Book® Values accurate?

The question "What's the Blue Book Value?" has been part of buying and selling a car for over 100 years. And simply put, no one has more experience with vehicle values and pricing than Kelley Blue Book. We've been the go-to source for both consumers and the automotive industry since 1926. We leverage massive amounts of data, including actual transactions, then adjust for local market conditions and seasonal trends. Our values reflect both wholesale and retail transactions to provide a 360-degree view of the market. We update our pricing at least weekly to reflect the market and give dealers and consumers the most up-to-date pricing.



Info for New Car Shoppers



Midsize Pickup Truck

Some Ford Maverick Buyers To Get Free AWD Upgrade

If you ordered a non-hybrid 2022 Ford Maverick in front-wheel-drive (FWD) with the optional 4K towing package, you're about to get a call from the dealership with some...

Sean Tucker | September 24, 2021



General

Best Cars And Top 10 Lists

It seems every new vehicle we drive is both more powerful and more fuel-efficient than its predecessor. More comfortable and more fun. More refined, but similarly...

KBB Editors | September 24, 2021



General

10 Best Cars Worth Waiting For

Here is our list of the 12 Best Cars Worth Waiting For.

Nelson Treon | September 24, 2021

Popular New Cars and Trucks

Ford F150	Honda CR-V	Ford Escape	Nissan Sentra
Chevrolet Silverado	Honda Civic	Jeep Wrangler	Jeep Grand Cherokee
Ram 1500	Nissan Altima	Ford Explorer	Ford Focus
Toyota Camry	Toyota RAV4	Hyundai Elantra	GMC Sierra
Toyota Corolla	Nissan Rogue	Toyota Highlander	BMW 3-Series
Honda Accord	Chevrolet Equinox	Toyota Tacoma	Ford Mustang

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EXHIBIT 2

KBB.com General Terms of Service

Last Updated: March 30, 2021

1. Description of KBB.com and These Terms of Service

- a. Welcome to KBB.com! Kelley Blue Book Co., Inc. (“Kelley Blue Book”, “us”, “we”, “our”) provides its products and services subject to these Terms of Service (“Terms”). By using KBB.com, you agree to the following Terms. These Terms may be updated by us from time to time, and we encourage you to revisit this page often and review the Terms. In addition to these Terms, when using particular KBB.com owned or operated services, you may also be subject to any additional posted guidelines applicable to such services.
- b. KBB.com provides you with access to many valuable resources, including Kelley Blue Book Used Car Values, New Car Pricing and quotes from dealerships, research, reviews and ratings, car buying advice, classified listings, as well as links to sites where you can obtain vehicle services such as financing and insurance, and other existing services and those that may later be offered to you (the “Service”). The Service includes advertisements, which are necessary for Kelley Blue Book to provide the Service to you. Unless explicitly stated otherwise, any new features that we may add to KBB.com will also be subject to these Terms, and any other special terms of service referenced in the new feature.

2. KBB.com Privacy Policy

- a. [Click here](#) to view the KBB.com **Privacy Policy**. You understand and agree that when you visit KBB.com, you are consenting to the collection and use of information provided by you and about your use of KBB.com and the Services, in accordance with the Privacy Policy.

3. Personal Use Only

- a. You may make personal use of all of the information you access on KBB.com (“Information”), but you may not take any of the Information and re-format and display it, or copy it on your Web site or in any other format, and you may not store or migrate any of the Information or other data from KBB.com without Kelley Blue Book’s written permission. By using the Service, you agree not to sell, store, distribute, transmit, display, reproduce, modify, migrate, create derivative works from, or otherwise exploit any of the Information content or data related to any portion of the Service. You may print a copy of particular vehicle values and prices and use the Information for your personal, non-commercial use, but you may not otherwise reproduce any material appearing on KBB.com. If you want to make commercial use of the Kelley Blue Book Information or Services, you must enter into an agreement with us to do so in advance, and **we would love to talk to you about that.**

4. Contributions to KBB.com

- a. By submitting ratings, reviews, content, ideas, survey responses, suggestions, documents, comments, and/or proposals (“Contributions”) to KBB.com through its surveys, “contact us”, or suggestion or feedback Web pages, you acknowledge and agree that: (a) your Contributions do not contain confidential or proprietary information; (b) Kelley Blue Book is not under any obligation of confidentiality, express or implied, with respect to the Contributions; (c) your Contributions automatically become the property of Kelley Blue Book without any obligation of Kelley Blue Book to you and Kelley Blue Book shall be entitled to use, copy, modify, or disclose (or choose not to use or disclose), delete in its entirety, adapt, publish, translate, create derivative works from and/or sell and/or distribute such Contributions for any purpose, in any way, in any media worldwide; (d) Kelley Blue Book may have something similar to the Contributions already under consideration or in development; and (e) you are not entitled to any compensation or reimbursement of any kind from Kelley Blue Book under any circumstances for your Contributions.
- b. You assume total responsibility and risk for your use of any interactive areas of KBB.com. You acknowledge that any of the Contributions posted or transmitted through KBB.com represents the views of the author, and not of Kelley Blue Book. You also acknowledge that your use of or reliance on such content is at your own risk.

- c. When publishing anything to KBB.com or using any social media tools or interactive features, you agree that you will not post or transmit:
- i. any copyrighted material unless you own or control the copyright in and to such material;
 - ii. material that is: knowingly false and/or defamatory, inaccurate, libelous, tortuous, abusive, vulgar, hateful, racist, bigoted, sexist, harassing, threatening, inflammatory, obscene, profane, sexually oriented, invasive of a person's privacy, or is otherwise objectionable or in violation of any applicable law, rule, or regulation;
 - iii. material that violates or infringes the rights of any other party, including, without limitation, rights of privacy, rights of publicity, copyright, trademark, or other intellectual property rights;
 - iv. profanity in subject lines, messages, or signatures;
 - v. any material containing viruses, Trojan horses, worms, or any other disruptive or harmful component;
 - vi. material that breaches another's privacy, i.e., containing phone numbers, addresses, or other personal information;
 - vii. spam, including, but not limited to, junk mail, chain letters, unsolicited bulk email or duplicative messages, excessive cross-postings, and material that is unrelated to the forum in which it is posted;
 - viii. material that contains advertisements or commercial solicitations; or
 - ix. material discussing illegal activities or linking to websites that deal with such activities.

d. You further agree that you will not attempt or do any of the following:

- i. interfere with or disrupt KBB.com or our computer systems, servers, or networks;
- ii. attempt to gain unauthorized access to any part of KBB.com, to accounts that belong to other users, or to computer systems or networks connected to KBB.com;
- iii. engage in any systematic extraction of data or data fields, including, without limitation, email addresses, by use of any automated mechanism, such web robots, crawlers, or spiders or otherwise;
- iv. collect information about others without their consent;
- v. interfere with the use of KBB.com by any other individual or party;
- vi. impersonate any person, or otherwise attempt to mislead others about your identity, or post material under secondary user names or other aliases; or
- vii. share any user name and/or password you have on KBB.com with any other persons.

e. Without limiting any of Kelley Blue Book's other rights or remedies, a violation of any of the above may result in the removal of any content you have transmitted or posted, revocation of any accounts you have on KBB.com or on our affiliated websites and services, and/or a ban from creating new accounts.

f. Although Kelley Blue Book cannot monitor all of the listings and content posted to KBB.com, we reserve the right (but assume no obligation) to delete, move, condense or edit any ads, ratings, reviews, content or other postings that come to our attention that we consider unacceptable or inappropriate, whether for legal or other reasons. We retain the right to deny access to anyone who we believe has violated these terms or any other term of these Terms. We will not, in the ordinary course of business, review the content of private electronic messages that are not addressed to us. However, we may occasionally monitor such communications as we believe is appropriate to comply with applicable laws, respond to legal process or a law enforcement request, to enforce these Terms, or to protect the rights, property or safety of visitors to KBB.com, our advertisers, the public, us or our affiliates. Notwithstanding the foregoing, Kelley Blue Book takes no responsibility and assumes no liability for any content posted to KBB.com by you or by third parties.

5. Kelley Blue Book® Instant Cash Offer Program Terms :

a. **Program Overview.** With the Kelley Blue Book Instant Cash Offer Program (“Instant Cash Offer Program”) you can complete a questionnaire online or at a dealership and get a specific offer to buy your car for cash today (“Instant Cash Offer” or “Offer”). You can redeem your Instant Cash Offer for cash, or put the value of your Offer toward the purchase of another vehicle, subject to these Instant Cash Offer Program Terms and Conditions, the KBB.com Terms of Service including but not limited to the Arbitration and Class Action Waiver provisions, all of which are incorporated herein by reference, and other terms and conditions provided through the Instant Cash Offer Program. Kelley Blue Book and Autotrader do not redeem Instant Cash Offers or purchase vehicles; rather, the Instant Cash Offer is redeemable at dealers who have paid Kelley Blue Book or an affiliate to participate in the Instant Cash Offer Program (“Participating Dealers”). The Instant Cash Offer is valid at any Participating Dealer for seven (7) days after it was issued. It is important to note that the Instant Cash Offer is based on specific information about your vehicle, which may result in variations from the information collected in connection with a Kelley Blue Book® Value. The Offer may be less than the Kelley Blue Book® Trade-In Value and may be lower than the Trade-In Range for a similar vehicle.

Your Vehicle must pass a mandatory vehicle inspection by a Participating Dealer. If the inspection report differs from your description or online assessment of your vehicle’s condition, the Participating Dealer may adjust the Offer amount, which may mean decreasing the Offer amount. Participating dealers are not owned or operated by, nor are they affiliated with or acting on behalf of, either Kelley Blue Book or Autotrader. Kelley Blue Book, Autotrader, and their affiliates expressly disclaim any liability resulting from an adjustment of the Offer or refusal to accept the vehicle by Participating Dealer(s).

b. Program Requirements. In addition to the other KBB.com Terms of Service and other terms to redeem an Instant Cash Offer that you have received through the Instant Cash Offer Program: (1) your vehicle must be located in a market in which the Instant Cash Offer Program is offered; (2) you must be the registered owner of the vehicle in question; (3) you must possess a valid driver's license or other form of valid government-issued photo ID; (4) you must not be an automobile dealer or an employee or agent of an automobile dealer; (5) the personal contact information and the information about your vehicle that you provide in response to our online questionnaire must be accurate, complete, and truthful; and (6) within seven (7) days of the issuance of your Instant Cash Offer, you must deliver your vehicle, with a valid registration and either clear and unencumbered title in your name, or complete documentation regarding any lease obligations or liens on your vehicle (including, for example, contact information for your lender or leasing company, relevant account information, and the current loan payoff amount or lease early termination fee for your vehicle) to a Participating Dealer. The Participating Dealer will inspect your vehicle to confirm its condition and verify the accuracy of the other information about your vehicle that you submitted online. Based on the results of this verification inspection (more information below) reported by the Participating Dealer, the dollar amount of your Instant Cash Offer may be adjusted up or down prior to redemption.

c. **Restrictions.** The Instant Cash Offer Program is not available in all areas and not all vehicles are eligible for Offers. The Instant Cash Offer Program may not be used to sell or to trade in certain categories of vehicles at Kelley Blue Book's discretion, including, without limitation: current model year (or newer) vehicles; exotic vehicles; commercial vehicles; vehicles subject to recall or investigation by a government agency; vehicles with a police, fire, livery, taxi, or rental history; reconstructed or salvage vehicles; vehicles without a valid Vehicle Identification Number (VIN); vehicles not originally built for the United States market or that were imported illegally or outside of official manufacturer channels (i.e., "gray market" vehicles); vehicles older than 24 model years; vehicles that have over 300,000 miles on the odometer; vehicles with altered drivelines or bodies or illegal or non-functioning emissions equipment; vehicles registered at an auto auction or offered for sale through any wholesale channel within 45 days; and vehicles that we would value at less than \$1,000. You may use the Instant Cash Offer Program to sell or trade in a maximum of three vehicles in any six-month period. Vehicles with an Offer value greater than \$75,000 may not be accepted by every Participating Dealer and may require an additional inspection.

d. **Some Offers Require Review.** Although the majority of Instant Cash Offers generated by the Instant Cash Offer Program will be delivered within moments of submitting a valid request, some requests require manual review. This manual review process usually will be completed within minutes of submitting a request but occasionally may take until the next business day.

e. The Information You Provide in Connection with Your Offer. By requesting an Offer, you represent and warrant that the information you provide is accurate and not false or misleading and that you are the sole owner or any images you submit in connection with the Offer and that the images will not violate the intellectual property rights of any third party, including copyright or other intellectual or proprietary rights. You further agree that by submitting any information or images in connection with an Offer, you grant to KBB and its affiliates a nonexclusive, royalty-free, perpetual, transferable, irrevocable and fully sub-licensable right to use, reproduce, modify, adapt, translate, distribute, publish, create derivative works from and publicly display and perform such information and images throughout the world in any media, now known or hereafter devised. You acknowledge that if you provide us with any false, incomplete or inaccurate information, including, without limitation, vehicle information or personal contact information, your Instant Cash Offer may be immediately invalidated. You further acknowledge that if vehicle images are inconsistent with other information you provide, this may affect the accuracy of your Offer. By requesting an Offer, you agree that we, our service providers, and Participating Dealers may contact you, by any method that you supplied for your contact information, about vehicles or other products and services that may be of interest to you. You will have to supply a phone number, but it doesn't have to be a mobile number. If you do supply a mobile number, you consent to receive calls or texts at that number, whether manually or automatically dialed, from us and from Participating Dealers.

f. Participating Dealers

- i. Participating Dealers pay a monthly subscription to participate in and receive leads through the Instant Cash Offer Program. Offers provided through the Instant Cash Offer Program are calculated and generated by a proprietary appraisal tool intended to generate a price reflecting a liquid cash offer to be honored by a Participating Dealer irrespective of whether you are purchasing another vehicle from that Participating Dealer. Instant Cash Offer Program guarantees to Participating Dealers that your vehicle will be worth at least the amount of the Offer. Participating Dealers are not owned or operated by, nor are they acting on behalf of, Kelley Blue Book, and, except as described herein, are not otherwise affiliated with Kelley Blue Book. If you redeem your Instant Cash Offer at a Participating Dealer, you will have the option of either using your Instant Cash Offer to trade in your vehicle or to sell your car for a check. If your Instant Cash Offer does not identify a Participating Dealer near you, please call our customer service department at 1-866-559-5268 or send us an [email](#) to request this information.
- ii. Although Participating Dealers are not obligated to purchase your vehicle or accept your vehicle for trade for any price other than the amount of your Instant Cash Offer, you are welcome to try to negotiate a more favorable price or trade-in amount for your vehicle and, of course, you are always free to sell or trade-in your vehicle outside of the Instant Cash Offer Program. Though we think the Offer allows for a convenient and easy way to sell your vehicle, it may not be the highest sale price or trade-in amount that you could receive for your vehicle outside of the Instant Cash Offer Program.

g. Verification Inspections

- i. Participating Dealers will conduct a mandatory vehicle inspection free of charge to verify the accuracy of the vehicle description and condition information that you provided to us online. This verification inspection may include, for example, paint thickness measurements, a road test, a mechanical inspection, and a review of vehicle history reports and disclosure statements regarding flood, salvage, or odometer discrepancies (including rollbacks), and the like. The Participating Dealer will submit the results of the verification inspection to the Instant Cash Offer Program using the same online tool that you used to request your Instant Cash Offer, and we may raise or lower the dollar amount of your Instant Cash Offer prior to redemption based on the information revealed by the inspection. All decisions of the Participating Dealer regarding the condition of your vehicle will be final.
- ii. At the conclusion of your vehicle verification inspection, you can redeem your Instant Cash Offer, subject to any applicable adjustments after the inspection, by delivering your vehicle on the spot or by returning your vehicle to your Participating Dealer's location by the end of the next business day in the same condition and with no more than 50 additional miles on the odometer.

h. Redeeming Your Instant Cash Offer

i. Selling Your Vehicle to a Participating Dealer. If you decide to redeem your Instant Cash Offer by selling your vehicle, the Participating Dealer will issue you a check following the release of all applicable liens and lease obligations and the Participating Dealer's receipt of a clear and unencumbered vehicle title, subject to Section 5.h.iii. All checks will be made payable to the vehicle owner(s) named on the vehicle title.

ii. Redeeming Your Offer Towards the Purchase of Another Vehicle. If you elect to apply your Instant Cash Offer to the purchase of another vehicle, your Participating Dealer will issue you a credit toward the price of any vehicle available in its inventory in exchange for your vehicle. The Offer credit will be given after the release of all applicable liens and lease obligations and the receipt of a clear and unencumbered vehicle title (see Section 5 h.iii).

iii. **Equity in Your Vehicle.** If there are outstanding lien or lease obligations on your vehicle, the following will apply:

1. Negative Equity. If you have negative equity in your vehicle (i.e., your outstanding loan balance or lease payment obligation exceeds the amount of your Instant Cash Offer), you will be responsible for paying the difference between the Instant Cash Offer and the amount needed to clear the title to your vehicle by certified check or other form of payment acceptable to the Participating Dealer before your transaction can be completed.

2. Positive Equity. If you have positive equity in your vehicle, the Participating Dealer will issue you a check or a trade-in credit, as applicable, for the difference between the amount needed to clear the title (including any related fees) to your vehicle and the Instant Cash Offer. Your Participating Dealer will assist you with the processing of the paperwork and payments necessary to settle your loan or lease obligations and to obtain a clear title to your vehicle. This process typically takes 10 to 14 business days following delivery of a vehicle to a Participating Dealer, but it could take longer in some circumstances.

i. **Release.** BY SUBMITTING YOUR INFORMATION TO RECEIVE AN OFFER, YOU AGREE NOT TO SUE KELLEY BLUE BOOK, ITS AFFILIATES, ITS SERVICE PROVIDERS, OR ITS OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS (COLLECTIVELY, THE “RELEASED PARTIES”) FOR, AND AGREE TO RELEASE AND HOLD HARMLESS THE RELEASED PARTIES FROM AND AGAINST, ANY AND ALL CLAIMS RELATING TO OR ARISING OUT OF ANY VEHICLE SALE OR INSTANT CASH OFFER TRANSACTION THAT YOU ENTER INTO WITH A DEALER IN CONNECTION WITH THE INSTANT CASH OFFER PROGRAM. IN THE EVENT THAT ANY CLAIMS OR DISPUTES ARISE OUT OF SUCH A TRANSACTION, YOU AGREE TO LOOK SOLELY TO YOUR PARTICIPATING DEALER FOR YOUR REMEDY AND NOT TO THE RELEASED PARTIES.

6. Registration

- a. To obtain access to certain services from KBB.com, you may be required to register on KBB.com. As part of the registration process, you will be required to select a user name and a password. You agree that the information you supply during that registration process will be accurate and complete, and that you will not register under the name of another person. Failure to provide accurate and timely information may result in your account being closed and/or your access to content provided through your account being suspended, discontinued, or removed. We reserve the right to disallow use of a user name that we deem offensive or inappropriate. You will be responsible for preserving the confidentiality of your password and for all actions of persons accessing KBB.com through any username/password assigned to you. You will notify Kelley Blue Book's Customer Service Department of any known or suspected unauthorized use of your account via email.
- b. Kelley Blue Book reserves the right to disclose any information we collect through user accounts and registrations in accordance with our [Privacy Policy](#).

7. Buying and Selling Vehicles

- a. KBB.com offers a vehicle listing and information service that brings together buyers and sellers. Kelley Blue Book is not a party to any transaction between vehicle buyers and sellers that originates on or through KBB.com. Information about a particular vehicle is supplied by the seller, and may include data from third parties and/or machine learning. The price and other terms of any sale remain subject to direct negotiation between the buyer and the seller.
- b. Though we hope that all who come to KBB.com will act honorably and treat each other fairly, we cannot verify the information about vehicles that sellers supply or guarantee the vehicles offered by sellers. Nor can we assure the seller of a vehicle that the payment he or she receives from the buyer is legitimate. When using KBB.com to find a buyer for your vehicle or a vehicle to purchase, we urge you to use the same common sense and good judgment you would use in selling a vehicle through, or responding to, a classified ad in the newspaper. There is no substitute for healthy skepticism and your own good judgment.

c. Buying a Vehicle

- i. The prices listed by sellers on KBB.com often exclude sales tax, finance charges, title, license, regulatory, dealer documentary, emission testing, and compliance fees, any or all of which may be added to the listed price to arrive at the final sale price of a particular vehicle. Before purchasing a vehicle or any other good or service you have read about on KBB.com, you should confirm with the seller any information, including the price that is important to your purchasing decision. Kelley Blue Book is not responsible for, and does not guarantee the performance of, any such vehicles, goods or services listed or researched on KBB.com. We may remove or hide parts or all of a vehicle advertisement on KBB.com if we determine, in our sole discretion, that the vehicle advertisement or price violate the [Vehicle Advertisements and Pricing Guidelines for Dealers](#).
- ii. We may screen some email messages sent through KBB.com to sellers about vehicles listed on KBB.com. If it appears that your email message has not reached the seller of the vehicle you are inquiring about, you might try inquiring by telephone if the seller has provided a telephone number.
- iii. Our used car listings include vehicles that have been “certified” as meeting certain standards established by manufacturers and/or dealers in connection with their pre-owned vehicle programs. The decision to certify any particular vehicle is made by the certifying manufacturer or dealer, and the vehicle information included in KBB.com’ certified vehicle listing is provided by the listing dealer. Neither Kelley Blue Book nor the manufacturer is responsible for the accuracy of any information contained in a certified vehicle listing. Only the party that certifies a vehicle is responsible for the decision to certify that vehicle. You should familiarize yourself with the terms of the applicable certification program before buying a certified vehicle. Ads purchased by private sellers through our Sell Your Car service will not appear in any “certified” area of KBB.com. Ads for certified vehicles apply only to vehicles certified by dealers in accordance with the certification programs of the automobile manufacturers with which we have partnerships.

iv. Certain dealers who participate in an anonymous chat or anonymous texting service provided by Kelley Blue Book or its affiliates may offer you an option to inquire about a listed vehicle without disclosing your personal information (such as your name, e-mail address or telephone number). If you contact a dealer via an anonymous text, the dealer will be able to respond to that text and contact you without having access to your mobile number. Both you and the dealer have the option to end such chat or text conversation at any time. If, in the course of such chat or text conversation, you supply to the dealer your email address and/or telephone number, you consent to receive e-mail communications to such e-mail address and calls and texts at that number, whether manually or automatically generated. You are under no obligation to provide your name or contact information over the course of such chat or text conversation.

v. Anonymous chat and text service rely on infrastructure and services furnished by third-party providers. Neither Kelley Blue Book, nor its affiliates, nor participating dealers warrant the continuous availability or error-free operation of the anonymous chat and text services.

d. Listing Your Vehicle

- i. KBB.com offers a variety of ad packages to private sellers, with combinations of features that may vary by market area. For information about the ad packages available to private sellers in your area, click the “Sell Your Car” tab or button on our home page. On the next page, enter your ZIP code to view our product offerings. For information about ad packages available to dealers (and private sellers wishing to list more than five vehicles for sale at a given time), please visit B2B.KBB.com.
- ii. By offering a vehicle for sale through our Sell Your Car service for private sellers, you must agree to our Terms of Sale. The Terms of Sale require, among other things, that you be prepared to sell your vehicle at the price at which, and on the terms on which, you have listed it. You must have possession of the actual vehicle listed and the ability to transfer title. To list a vehicle for sale on KBB.com, sellers also are required to provide certain identifying and contact information. The information must accurately identify the seller and the method of contact must permit buyers to communicate directly with the seller. You may not charge any potential buyer for information about any vehicle listed for sale on KBB.com, nor may you use KBB.com to promote, without our prior written permission, any other website, product, or service.
- iii. By using KBB.com to sell your vehicle as a private seller, you represent that you are at least 18 years of age, that you are not a motor vehicle dealer, that you are not listing a vehicle for sale in your capacity as an owner, employee or representative of a dealer, and that neither you nor anyone acting on your behalf will list more than five vehicles for sale simultaneously. A private seller who wishes to list more than five vehicles simultaneously, and any commercial dealer wishing to list any vehicle, must make arrangements with us before doing so. Please visit B2B.KBB.com for information.

iv. When you list a vehicle for sale through our Sell Your Car service, we may obtain additional distribution for your listing through our relationships with other websites. We also may promote your listing on or through third-party websites or services as an added value. Those providers may contact you about your ad on their website and may try to sell additional services to you, but you are not obligated or required to purchase any additional services and may be able to opt out of displaying your ad on their website. If other third parties contact you without your permission offering to sell you services, they have likely misused KBB.com and violated these Terms to exploit your listing information. If you receive any such solicitations that you did not authorize, please bring them to our attention by using our contact us form.

v.

vi. Listings are not to be used to advertise more than one vehicle, regardless of a listing's duration. For this reason, you cannot edit your vehicle's year, make, model, or VIN once you have purchased a listing. Always double-check this information before purchasing a listing. Listing fees are generally not refundable, so if you enter incorrect information in the year, make, model, or VIN fields, you will have to delete the listing and purchase a new one to create an accurate listing. By using KBB.com to sell your vehicle, you agree to pay the price of the package you select and the prices of any advertising upgrades, regardless of whether your vehicle sells as a result of the listing. You also agree to pay any applicable taxes relating to your use of the Sell Your Car service. See section 4 of the [Terms of Sale](#) for information on refunds.

- vii. Responsibility for the information contained in each listing lies with each seller. You alone are responsible for the material you post, including listing information and photos of your vehicle, and for the content of all email messages you transmit through KBB.com. Nothing will undermine a user's confidence in the vehicle you are looking to sell faster than inaccurate statements or misleading representations about the vehicle. And since any erosion of user confidence in you is likely to be accompanied by erosion of user confidence in us, we care deeply about making sure that the information you supply is accurate and that, in all respects, you treat other users of KBB.com fairly and honorably.
- viii. In connection with our efforts to combat Internet fraud, some listings may be screened before being posted publicly. This process may delay the publication of your listing. Though we cannot monitor every transaction that originates through a listing on KBB.com, we may, from time to time, perform random quality assurance tests to confirm that those who offer vehicles for sale over KBB.com are prepared to sell those vehicles at the prices and on the terms which such vehicles are advertised. By using KBB.com, you agree to cooperate in these quality assurance tests. If our tests reveal, or we otherwise learn, that a seller may be violating these Terms, we reserve the right to deny that seller use of services offered on KBB.com and any affiliated websites and remove that seller's listings from each site.
- ix. By listing a vehicle for sale on KBB.com, you agree to use the email addresses of those responding to your listing only to communicate with them about the potential sale of that vehicle.

- x. By listing a vehicle for sale on the KBB.com, you represent and warrant that: you are the sole author and owner of the intellectual property rights in any data, information, text, image, or other material (“Content”) that you submit to KBB; you voluntarily waive all “moral rights” that you may have in such Content; the Content you submit is accurate and not false or misleading nor does it infringe any third party’s copyright, patent, trademark, trade secret or other intellectual or proprietary rights or rights of publicity or privacy. You further agree that you shall not: submit any Content that is, or may reasonably be considered to be, defamatory, libelous, obscene, pornographic, indecent, lewd, suggestive, threatening, abusive, inflammatory, hateful, racially or religiously biased or offensive, harassing, fraudulent, or otherwise objectionable to any individual, partnership or corporation; or impersonate any person or entity or otherwise misrepresent your affiliation with a person or entity.
- xi. By listing a vehicle for sale on the KBB.com, you grant to KBB and its affiliates a nonexclusive, royalty-free, perpetual, transferable, irrevocable and fully sub-licensable right to use, reproduce, modify, adapt, translate, distribute, publish, create derivative works from and publicly display and perform such Content throughout the world in any media, now known or hereafter devised.

8. Modifications and Termination of Service

- a. Kelley Blue Book reserves the right at any time and from time to time to modify, update, suspend or discontinue all or part of the Service for any reason with or without notice to you. You agree that we may, under some circumstances and without prior notice to you, terminate your use of and access to any of the parts of KBB.com to which we restrict access, for example, by requiring registration. Some of the reasons for such termination may include, but are not limited to, (a) a breach or violation or suspected breach or violation of these Terms or other incorporated terms or guidelines, (b) a request by law enforcement or another government agency, (c) our decision to discontinue or change all or part of KBB.com, (d) technical or security issues, and (e) fraudulent or illegal activities. All terminations will be made in Kelley Blue Book's sole discretion and you agree that Kelley Blue Book will not be liable for any termination of your use of or access to the Service, KBB.com or any part of KBB.com.

9. Your Dealings with KBB.com Advertisers

- a. Your correspondence or business dealings with, or participation in promotions of, advertisers found on or through the Service, including payment and delivery of related goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such advertiser. You acknowledge and agree that Kelley Blue Book will not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings or as the result of the presence of such advertisers on the Service.

10. Links to Other Websites

- a. KBB.com provides links to other Web sites. You acknowledge and agree that, because Kelley Blue Book has no control over such sites, we are not responsible for them or the resources and information they contain. In particular, we are not responsible for the availability of services related to another Web site that has a link on KBB.com; we do not necessarily endorse such sites, and we are not responsible or liable for any content, advertising, products or other materials on or available from such sites. You further acknowledge and agree that Kelley Blue Book will not be liable for any loss whatsoever for any damages caused by or incurred in connection with the use of or reliance on the information, goods or services available through any such site.

11. Kelley Blue Book's Proprietary Rights

- a. You acknowledge and agree that the Service and all materials on KBB.com, contain proprietary information and data that is protected by applicable copyright, trademark and other intellectual property laws (Kelley Blue Book's "Proprietary Information"). All materials on KBB.com, including such Proprietary Information, may only be used for personal, non-commercial purposes, and you agree not to sell, transfer, reproduce, duplicate, distribute, publish, modify, migrate, store, copy or transmit any material from KBB.com unless and until you have obtained our prior written consent. The Proprietary Information covered by this prohibition includes, without limitation, the software programming and html and other code contained in the Web site, Kelley Blue Book Vehicle Values, Kelley Blue Book New Car Pricing information, compilations of vehicle specifications, any reviews, ratings, user generated content, text, graphics, logos, photographs, audio or video material or stills from audiovisual material available on KBB.com.
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12. Use of Kelley Blue Book Logos

- a. [Click here](#) to view the Kelley Blue Book logos (“Kelley Blue Book Marks”), and the terms of use governing downloads of the Kelley Blue Book Marks. You agree that all of the Kelley Blue Book Marks are the property of Kelley Blue Book, and agree that you will not use the Kelley Blue Book Marks without Kelley Blue Book’s prior written permission.

13. No Illegal Use

- a. As a condition of your use of and access to KBB.com, you agree not to use the Services for any unlawful purpose or in any way that violates these Terms. You also agree not to use the Services in any way that could damage, disable, overburden, or impair KBB.com or any Kelley Blue Book server, or the associated networks, or interfere with any other party's use and enjoyment of any Services.

14. Dispute Resolution – Mandatory Arbitration and Class

- a. **Arbitration Agreement:** YOU AND KELLEY BLUE BOOK AGREE THAT ANY CLAIMS OR DISPUTES (“Claims”) THAT ARISE OUT OF OR RELATE IN ANY WAY TO THESE TERMS, KBB.COM, OR THE SERVICES (INCLUDING BUT NOT LIMITED TO BILLING DISPUTES) SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION OR IN SMALL CLAIMS COURT. In arbitration, there is no judge and no jury. Instead, Claims are decided by an arbitrator whose authority is created by and governed by this arbitration agreement. Review of arbitration awards in the courts is very limited.
- b. **Class Action Waiver:** YOU AND KELLEY BLUE BOOK AGREE THAT ALL CLAIMS BETWEEN US WILL BE RESOLVED IN AN INDIVIDUAL ARBITRATION. WE BOTH AGREE THAT THERE WILL BE NO CLASS, REPRESENTATIVE, OR CONSOLIDATED ACTIONS IN ARBITRATION. In addition, neither you nor Kelley Blue Book may participate in a class or representative action in court as a class member if the Claims asserted in the litigation would fall within the scope of this arbitration agreement if asserted directly by you or Kelley Blue Book. To be clear, you and Kelley Blue Book both waive any right to participate in any class action involving disputes between us.
- c. This class action waiver is an essential part of our arbitration agreement and may not be severed. If for any reason this class action waiver is found unenforceable, then the entire arbitration agreement will not apply. However, the Jury Trial Waiver set forth in Section 15 of these Terms will remain in full force and effect.
- d. **Arbitrator Authority:** The arbitrator’s authority is governed by this arbitration agreement. You and Kelley Blue Book agree that the arbitrator may award the same relief that a court of competent jurisdiction could award – consistent with and limited by these Terms (including the limitations of liability set forth in Section 17), but the arbitrator may not award declaratory or injunctive relief that extends beyond you and your dealings with Kelley Blue Book. An arbitrator may award attorneys’ fees and costs to the prevailing party if a court would be authorized to do so under the applicable law.

- e. **Arbitration Procedures:** You and Kelley Blue Book agree that your agreement affects interstate commerce, and the Federal Arbitration Act applies. All arbitrations shall be conducted by JAMS Endispute under its Streamlined Arbitration Rules and Procedures (“JAMS”). These Rules are available on the JAMS website at <http://www.jamsadr.com> or by calling 1.800.352.5267. If there is a conflict between the JAMS Rules and this arbitration agreement, then this arbitration agreement shall control. Kelley Blue Book will pay all filing fees and costs associated with commencing an arbitration, but you will be responsible for paying your own attorneys’ fees (if you chose to use an attorney in arbitration) unless you prevail in the arbitration and the arbitrator finds that you are entitled to recover your fees under the law. Except for claims determined to be frivolous, Kelley Blue Book agrees not to seek an award of attorneys’ fees in arbitration even if an award is otherwise available under applicable law. If you bring an arbitration against Kelley Blue Book, the arbitration hearing will be held in your hometown area, unless we both agree on a different location.
- f. **Survival:** This arbitration agreement survives the termination of these Terms between you and Kelley Blue Book.

15. Jury Trial Waiver.

- a. You and Kelley Blue Book expressly and knowingly **WAIVE THE RIGHT TO TRIAL BY JURY**. This means that if for any reason the arbitration agreement contained in Section 14 is not enforced or is found inapplicable, our claims against each other will be resolved by a judge rather than a jury.

16. Disclaimer of Warranties:

You Expressly Understand and Agree That:

- a. Your use of the Service is at your sole risk. Kelley Blue Book provides the Service to you on an “as is” and “as available” basis. Kelley Blue Book and its owners, shareholders, subsidiaries, affiliates, officers, employees, agents, partners and licensors expressly disclaim all warranties of any kind, whether express or implied, including, but not limited to the implied warranties of merchantability, fitness for a particular purpose and non-infringement.
- b. Kelley Blue Book and its owners, shareholders, subsidiaries, affiliates, officers, employees, agents, partners and licensors make no warranty that (i) the Service will meet your requirements; (ii) the Service will be uninterrupted, timely, secure or error-free; (iii) the results that may be obtained from the use of the Service will be accurate or reliable; (iv) the quality of any products, services, information or other material accessed, purchased or obtained by you through the Service will meet your expectations; and (v) any errors will be corrected.
- c. All material and information obtained through the use of the Service is accessed at your own discretion and risk, and you will be solely responsible for any damage to your computer system or loss of data that results from the accessing of any such material.
- d. No advice or information, whether oral or written, obtained by you from KBB.com or its affiliates or partners through or from the Service shall create any warranty whatsoever.
- e. **Vehicle valuations are opinions and may vary from vehicle to vehicle. Actual valuations are based upon current available information and analysis of market conditions, and will vary depending on specifications, vehicle condition or other particular circumstances pertinent to a particular vehicle or the transaction or the parties to the transaction. Kelley Blue Book assumes no responsibility for the accuracy of vehicle values and no responsibility for errors or omissions.**

17. Limitation of Liability

- a. You expressly understand and agree that Kelley Blue Book and its owners, shareholders, subsidiaries, affiliates, officers, employees, agents, partners and licensors shall not be liable to you for any direct, indirect, incidental, special, consequential or exemplary damages, including, but not limited to, damages for loss of profits, goodwill, use, data or other intangible losses (even if Kelley Blue Book has been advised of the possibility of such damages), resulting from: (i) the use or the inability to use the Service; (ii) the cost of procurement of substitute goods or services resulting from any goods, data, information or services obtained or received or transactions entered into as a result of your use of the Service; (iii) statements or conduct of any third party related to the Service; or (iv) any other matter relating to the Service.
- b. IF YOU RELY ON KBB.COM OR ANY INFORMATION, PRODUCT, OR SERVICE AVAILABLE THROUGH KBB.COM, YOU DO SO AT YOUR OWN RISK. YOU UNDERSTAND THAT THERE MAY BE DELAYS, OMISSIONS, INTERRUPTIONS, INACCURACIES, AND/OR OTHER PROBLEMS WITH THE INFORMATION, PRODUCTS, AND SERVICES PUBLISHED ON OR PROMOTED THROUGH KBB.COM. KBB.COM AND THE SERVICES ARE PROVIDED TO YOU "AS IS." KELLEY BLUE BOOK AND ITS AFFILIATES, AGENTS, AND LICENSORS CANNOT AND DO NOT WARRANT THE ACCURACY, COMPLETENESS, CURRENTNESS, NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE INFORMATION OR SERVICES AVAILABLE THROUGH KBB.COM (OR ANY INFORMATION, GOODS, OR SERVICES THAT ARE REFERRED TO, ADVERTISED OR PROMOTED ON, OR SOLD THROUGH KBB.COM). NOR DO WE OR THEY GUARANTEE THAT KBB.COM OR THE SERVICES WILL BE ERROR FREE, OR CONTINUOUSLY AVAILABLE, OR THAT KBB.COM OR THE SERVICES WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. KELLEY BLUE BOOK AND ITS AFFILIATES, AGENTS, AND LICENSORS WILL NOT BE LIABLE FOR ANY CLAIMS, ACTIONS, OR JUDGMENTS ARISING OUT OF OR RELATED TO ANY CONTENT POSTED TO KBB.COM BY YOU OR ANY THIRD PARTY.

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- d. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE DISCLAIMERS AND LIMITATIONS OF LIABILITY MAY NOT APPLY.

18. Indemnity and Release

- a. When you use KBB.com, you are agreeing to indemnify Kelley Blue Book, its owners, shareholders, subsidiaries, affiliates, officers, employees, partners, and licensors and hold them harmless from any and all claims and expenses, including attorney's fees, arising from your use of the KBB.com Web site, your use of the Service, or your submission of Contributions as set forth in Section 4 above. By using KBB.com you are agreeing to release Kelley Blue Book and its owners, shareholders, subsidiaries, affiliates, officers, employees, partners, and licensors from any and all claims, fees, costs, damages and obligations of any kind whatsoever that you may have against them arising out of or in any way related to such claims or obligations and to any disputes regarding use of ideas and/or related materials submitted to KBB.com. **You hereby agree to waive all laws that may limit such releases. For example, you specifically agree to waive the provisions of California civil code section 1542, which provides:**

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which is known by him must have materially affected his settlement with the debtor.”

19. Changes and Updates to These Terms of Service

- a. Kelley Blue Book may occasionally update or change these Terms, so we encourage you to view them often. Your continued use of the Service constitutes your agreement to these Terms and any updates.

20. General Information

- a. Choice of Law. The Terms and the relationship between you and Kelley Blue Book shall be governed by the laws of the State of California without regard to its conflict of law provisions.
- b. Waiver and Severability of Terms. The failure of Kelley Blue Book to exercise or enforce any right or provision of the Terms shall not constitute a waiver of such right or provision. If any provision of the Terms is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Terms remain in full force and effect.
- c. Entire Agreement. The Terms constitutes the entire agreement between you and Kelley Blue Book and governs your use of the Service, superseding any prior Terms with respect to the Service. You also may be subject to additional terms and conditions that may apply when you use or purchase certain other Kelley Blue Book services, affiliate or third-party services.
- d. Statute of Limitations. You agree that any claim, demand, or cause of action arising out of or related to the Service or your access or visit to KBB.com or these Terms must be filed by you within one (1) year after such claim, demand, or cause of action arose, or it is forever barred.

21. Reporting Violations to the Terms

- a. Please report any violations of the Terms to [Kelley Blue Book customer service](#).

Other Important KBB.com Policies:

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Instant Cash Offer

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What information should I bring when I drop off my car?

How do I contact Kelley Blue Book about my offer?

Contact Us

Business Inquiries

b2b.kbb.com

Mailing Address

195 Technology, Irvine, CA 92618

[Map](#)

What Is A Kelley Blue Book® Instant Cash Offer?

The Kelley Blue Book® Instant Cash Offer is a real offer for a specific amount to purchase a consumer's car or apply the amount toward another car. The Offer is valid for 7 days and can be immediately redeemed during business hours at any Participating Dealer, pending inspection. It is based on specific elements of the consumer's car, like installed options, specific condition (such as dents and mechanical issues) and local market demand.

How Is My Instant Cash Offer Calculated?

We calculate your Instant Cash Offer using a proprietary tool that accounts for fluctuating market conditions and used car prices that may vary from day to day, like home or stock prices. The calculation includes multiple data sources and is based on factors that affect used car pricing such as:

- Your Specific Vehicle Details

Our tool factors in details that are specific to your vehicle and critical to its evaluation, including mechanical condition, options, interior and exterior, mileage, year, make and model.

- Supply and Demand

Consumers have a large role in determining a car's value. When more buyers demand a particular vehicle, and its inventory is down, the value goes up. For example, when gas prices are at a premium, fuel-efficient vehicles may be in higher demand and sell for higher prices.

- Historical Trends

Historically, some cars hold their value and are in higher demand than others. Similarly, sometimes transaction prices for vehicles steadily increase over time, making those cars a more sought after commodity.

- Regional Differences

Buyers may be willing to pay sellers higher prices for the same vehicle depending on regional differences. For example, buyers in rural areas may consider large trucks more valuable than buyers in a city where parking spaces are tight.

- Local Market Influences

We also take into account comparable vehicle sales in your area – this information may include dealer sales data, auction prices, and private seller prices from local advertisements.

Am I Obligated To Redeem My Instant Cash Offer?

No. There is no obligation to trade-in or sell your car by simply receiving an Offer. The choice is yours.

How Is An Instant Cash Offer Different From Trade-In Value Range?

The Kelley Blue Book® Instant Cash Offer is:

- A fixed offer applied toward your next car purchase or used to sell your current car to a Participating Dealer (pending inspection)
- Valid for 7 days
- No need to negotiate because each offer is a fixed amount
- Based on specific details related to the condition and features of your car, like installed options, dents, mechanical issues, and local market demand

The Kelley Blue Book® Trade-In Value is:

- An estimated trade-in value used toward the purchase of another car only
- Updated weekly
- Applied to similar cars of the same year, make, model, style and general condition
- A useful tool for negotiating
- The general value Kelley Blue Book estimates consumers can expect to negotiate this week based on the style, condition, mileage and options of the vehicle when they trade it in to a dealer. However every dealer is different and values are not guaranteed

How Much Does It Cost To Receive An Instant Cash Offer?

It's free! There is no fee to obtain or redeem the Offer.

Do I Have To Purchase A Car With My Instant Cash Offer?

No. You can walk away with a check or use the Offer towards the purchase of another vehicle.

How Long Is My Instant Cash Offer Valid For?

Your Instant Cash Offer is valid for 7 days. After that time, you can resubmit your request, but your Offer amount may change.

How Long Do I Have To Accept My Offer After Inspection?

You'll have 1 day after inspection to redeem your Instant Cash Offer. If your car's condition changes or you add more than 50 miles from the time of inspection, your Offer may be recalculated.

How Long Will It Take To Receive My Instant Cash Offer?

You will typically receive an Offer within minutes. In some cases, it may take longer, such as during periods of heavy volume. The Instant Cash Offer program is not available for all makes and models, so if your vehicle falls into one of the unavailable categories, you will not receive an Offer.

What If The Participating Dealer I Go To Won't Match The Amount On My Instant Cash Offer?

Participating Dealers are required to honor your Instant Cash Offer, provided the information and condition you provided when creating your Offer are confirmed to be accurate by the Participating Dealer. If the information is not correct, the Participating Dealer can update the information using the same online tool you used to generate the Instant Cash Offer for your car, and the update may result in a modified Offer amount. So, the more details you enter about the condition of your car, the more accurate your Offer will be.

Why Do Offers Fall Out Of Trade-In Value Range?

Most offers do fall within range. If they fall out of range, reasons include, but are not limited to, market volatility, rapid changes to the market, mechanical issues, excessive damage, reported issues, aftermarket equipment, modified suspension, or the vehicle's specific condition.

My Car Isn't In Perfect Condition. Can I Still Get An Instant Cash Offer?

Yes, if your car is not in an otherwise excluded category.

What Makes A Car Ineligible For An Offer?

There are a variety of reasons why cars may not be eligible. Some possible reasons include, but are not limited to, title issues (salvage, grey market, taxis or limousines), market volatility, lack of market data, unresolved recalls, low value due to age or condition, aftermarket equipment, or if the vehicle has been at an auction within the last 45 days.

Can I Sell My Car If It's Financed Or Leased?

Yes. The Participating Dealer will process the necessary paperwork for you to pay off your vehicle and pay any related fees. Any remaining equity is yours to cash in or use toward the purchase of another vehicle. If your car is financed, bring your lienholder information. If your car is leased, check with your leasing company to find out what paperwork they require.

Please note that, if your car still needs to be paid off, this can affect how quickly the Participating Dealer can send you a check if you opt to sell the car to the Dealer without buying another car from that Dealer.

How Will My Car's Condition Be Verified?

When you present your Instant Cash Offer to the Participating Dealer, the dealer will conduct a visual inspection of the interior and exterior, then may test drive the vehicle to confirm its mechanical condition. If the inspection report doesn't match your online assessment

of your car's condition, the Offer may be raised or lowered based on the dealer's inspection report.

Where Can I Find The Vehicle Identification Number (VIN)?

- The VIN is on the driver's side of the dashboard by the window or on the driver's side doorjamb. It is also listed on your auto insurance card and on your state vehicle registration form.
- The letters "I", "O" and "Q" never appear in a VIN.
- The VIN must be exactly 17 characters in length.
- A VIN is assigned to each car by the manufacturer when the car is built. Each car manufactured after 1980 has a unique VIN.

Where Do I Take My Car To Redeem My Instant Cash Offer?

Take your car to a Participating Dealer to verify its condition and redeem your Instant Cash Offer. We'll provide you with a list of Participating Dealers, and you're free to choose which to visit.

How Far Away Will The Dealer Be?

We'll do our best to identify Participating Dealers in your metro area.

What Information Should I Bring When I Drop Off My Car?

To finalize the sale, bring the following information to a Participating Dealer:

- Your Instant Cash Offer certificate
- Your vehicle title. If you don't have a title because your car is financed, bring your lienholder information. If your car is leased, check with your leasing company to find out what paperwork they require.
- Your vehicle registration
- A valid driver's license or other government photo ID
- All keys, keyless remotes and manuals
- Service and repair records

Don't forget to make arrangements for a ride home and remove all personal items from your vehicle!

How Do I Contact Kelley Blue Book About My Offer?

If you have more questions, please email [Customer Support](#) anytime.

You can also contact us at (866) 559-5268.

Mon.- Sat. 10 am - 7 pm ET

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New Car

What is the Kelley Blue Book® Price Advisor?

What is the Kelley Blue Book® Fair Purchase Price?

What is the Fair Market Range?

How is the Fair Market Range on the Price Advisor determined?

What is MSRP? Is that the same as "Sticker Price"?

What is Invoice?

What does the term "holdback" mean?

When will you have more new car pricing?

How often do you update your new car pricing?

Does your pricing account for my region?

What is the difference between factory, port, and dealer-installed options?

Do you have Canadian pricing?

Do you have pricing for other countries?

Does Kelley Blue Book provide escrow services for vehicle purchases or guarantee online vehicle purchase transactions?

I am buying a demo car from a new car dealer, but it already has 700 miles on the odometer. Is this car considered new or used? How do I find its value?

What do the abbreviations and symbols on your site mean?

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Business Inquiries

b2b.kbb.com

Mailing Address

195 Technology, Irvine, CA 92618

[Map](#)

What Is The Kelley Blue Book® Price Advisor?

The Kelley Blue Book® Price Advisor is a range-based pricing tool to help car buyers and sellers talk about price realistically. Research from the Cox Automotive Car Buying Journey Study shows that shoppers are looking for a fair price not only for new vehicles, but also for used vehicles and the vehicles they currently own. When you limit your market-based pricing to a single price point, it doesn't consider all the variables associated with structuring a car deal. The Kelley Blue Book® Price Advisor is designed to reduce friction between buyers and sellers.

What Is The Kelley Blue Book® Fair Purchase Price?

Fair Purchase Price reflects the price consumers are typically paying for this vehicle. The Fair Purchase Price is regionalized based on actual new-vehicle transactions collected from across the country and adjusted regularly as market conditions change. Fair Purchase Price is determined by collecting thousands of actual consumer vehicle purchase prices, plus data from national vehicle registration databases and several other reliable third-party sources. Kelley Blue Book's lead analysts and statisticians review and validate the data each week for reliability.

Some sites and tools purport to show you the drop-dead lowest prices, but the Kelley Blue Book Fair Purchase Price gives you a realistic view of what a new car is actually selling for.

What Is The Fair Market Range?

The Fair Market Range reflects the range of prices that Kelley Blue Book estimates most people will pay for a specific vehicle this week based on its year, make, model and style. This range is determined using sophisticated statistical models that consider recent transactions, supply, demand and market changes. Sometimes people think that the lower part of the range represents a vehicle with less equipment and the top of the range shows a vehicle (or a style) with more equipment. This isn't the case. If you choose options, packages, and colors when looking up a car, the Fair Market Range you see is for THAT vehicle with THAT equipment.

How Is The Fair Market Range On The Price Advisor Determined?

The Fair Market Range for new cars is Kelley Blue Book's estimate of what a consumer can reasonably expect to pay this week in their area for a vehicle configured with their selected options, excluding taxes, title, fees and any available special offers. We determine values in the Fair Market Range by collecting hundreds of thousands of vehicle transactions each week and updating our values with that information.

What Is MSRP? Is That The Same As "Sticker Price"?

The MSRP, or Manufacturer's Suggested Retail Price, is the price set by the new car manufacturer. The MSRP shown for a vehicle includes

destination charges and minimum required equipment. MSRP, destination charges and minimum required equipment appear as separate prices on the manufacturer's window sticker, so "MSRP" and "sticker price" aren't exactly the same. A dealer can choose to sell a vehicle above or below its listed MSRP.

What Is Invoice?

Invoice price comes up often in price negotiations, so Kelley Blue Book provides it as a point of reference only. Consumers should know that the invoice price often bears little resemblance to how much the dealer really paid for the car. Invoice price is the price an automaker charges its franchise dealers for a new vehicle, but it does not include holdbacks and factory-to-dealer incentives, which can lower the effective cost to the dealer. The invoice price shown includes destination charges and minimum required equipment but it doesn't include any dealer costs for local and regional advertising, selling, preparing, displaying or financing the vehicle. Kelley Blue Book does not represent that the invoice price is the price a dealer actually paid for the vehicle.

What Does The Term "Holdback" Mean?

Automakers offer holdbacks to help reduce some of the costs of a dealer acquiring a new car from the factory – and keeping it on his lot. Usually holdbacks are from one to three percent of the MSRP and vary in duration. Holdbacks help cover the interest on the dealer's vehicle loans. When a dealer can sell the car quickly, he keeps more of the holdback money. The longer the car stays on his lot, the less he gets. Once the holdback expires, the dealer can begin to lose money on the car. While holdbacks are not negotiable, it is possible to negotiate with the dealer by knowing how much holdback he/she will be keeping. If a car has been on the lot for two or three months, the dealer is far more likely to sell it at a better price to avoid building up more debt. Remember, the dealer's profit has to cover the cost of operating the dealership, paying his salesman, maintaining his inventory and advertising the vehicle. Also keep in mind that popular or hard-to-find models will often fetch top dollar, so dealers will be less inclined to reduce their price.

When Will You Have More New Car Pricing?

As soon as a manufacturer releases pricing information, we map out the complex relationships that exist for any given vehicle. For example, maybe you can't get a sunroof all by itself; you might need to get heated seats too. We then upload the verified info to KBB.com once a week. Please be aware that many new models are advertised and may even appear in the dealerships before the manufacturer has finalized pricing.

How Often Do You Update Your New Car Pricing?

We update or verify Fair Purchase Price and Fair Market Range at least once a week to account for market conditions and fluctuations. We update or verify other elements like MSRP and invoice as needed – when we get new info from the manufacturer.

Does Your Pricing Account For My Region?

Yes. We understand how important it is to provide pricing that is geographically relevant. In order to better meet consumer and dealer need, we produce values based on 134 geographic regions in the U.S. and analyze each region individually to reflect local pricing and economic conditions.

In addition, we now produce valuations for Canada and several other countries.

What Is The Difference Between Factory, Port, And Dealer-Installed Options?

Factory-installed options are add-ons that the factory adds, whereas port-installed options (PIO) are installed on the vehicle once it arrives in the United States – literally "at port." Both factory-installed options and port-installed options must be factory approved. Since there is some price control, we can consider them when providing Fair Purchase Price or Fair Market Range.

Dealer-installed options are items added to the vehicle once it arrives at the dealership. These might include alarm/security systems, upgraded wheels, etc. We don't include dealer-installed options when showing Fair Purchase Price or Fair Market Range, since these options can vary widely in price and quality. There are just too many variables to ensure any kind of accuracy when it comes to dealer-installed options.

Do You Have Canadian Pricing?

Yes! Pricing and other data on KBB.com is specific to the U.S., but in 2020 Kelley Blue Book also started providing data for the Canadian market. Canadian pricing will be following soon and will be adjusted for each province & territory to reflect local economic and market conditions. You can find KBB Canada at KBB.ca

Please also remember that vehicles sold in Canada (and other countries) often differ from their U.S. counterparts in engine spec and optional equipment.

Do You Have Pricing For Other Countries?

Pricing and specifications info on KBB.com is specific to the United States, but Kelley Blue Book also operates websites with pricing and information specific to these other countries:

- Brazil – kbb.com.br
- Canada – kbb.ca

In addition, you can find Kelley Blue Book data and valuations on websites in these countries

- Australia – kbb.com.au
- China – jingzheng.com

Remember that vehicles sold in other countries may look the same as their U.S. counterparts, but often contain significant differences in engines, safety standards and optional equipment.

If just want a general idea of pricing for a country where we don't offer values, you can look up a vehicle in our Western Region – and, of course, convert from U.S. dollars to your country's currency. Use the ZIP code 92618. Keep in mind that since vehicles can vary significantly from country to country, it's tricky to compare prices internationally.

As we continue to offer more global websites, we will pass the info on to you via KBB.com.

Does Kelley Blue Book Provide Escrow Services For Vehicle Purchases Or Guarantee Online Vehicle Purchase Transactions?

No. While many dealers display the Kelley Blue Book Price Advisor to provide context on what might be a good deal or great deal, Kelley Blue Book does not participate in new or used vehicle transactions or guarantee pricing. To read more about how to help protect yourself from online fraud, [More](#)

I Am Buying A Demo Car From A New Car Dealer, But It Already Has 700 Miles On The Odometer. Is This Car Considered New Or Used? How Do I Find Its Value?

A vehicle is considered new until it has been registered by an owner, not by virtue of the number of miles on the odometer. Unfortunately we cannot provide you with a standard deduction for miles on a new car. The discount offered for a demo model would depend on the dealer and should be compared against incentives or charges made on the new model before making your decision.

What Do The Abbreviations And Symbols On Your Site Mean?

(□) - This bullet-symbol indicates the model(s) for which this line item is listed. Loosely, "Available for this price on... □ LS, GS, etc."

(*) - The asterisk is used as the wildcard symbol. It is a place holder to signify any missing character. For example, D*B means D(any letter here)B.

2D - Two Door

4D - Four Door

5D - Five Door

2WD - Two-Wheel Drive

4WD - Four-Wheel Drive

6-CYL - Six-Cylinder Engine

8-CYL - Eight-Cylinder Engine

ABS - Anti-lock Braking System

AWD - All-Wheel Drive

CID - Cubic Inches Displacement

CVT - Continuously Variable Transmission

DOHC - Dual Overhead Cam

DRW - Dual Rear Wheels

DSL - Diesel

EFI - Electronic Fuel Injection

FFV - Flexible Fuel Vehicles

GVWR - Gross Vehicle Weight Rating

HQ - High Output Engine

HP Turbo - High Performance Turbo

LP - Low Pressure Engine

MFI - Multiport Fuel Injection

MSRP - Manufacturer's Suggested Retail Price

N/A - listed in the description text means that the item is Not Available. There is usually text describing the circumstances.

N/A - listed in the pricing columns means that at this time the pricing information is Not Available.

N/C - means that there is No Charge for this item.

PFI - Port Fuel Injection

PIO - Port Installed Options

PZEV - Partial Zero Emissions Vehicle

SFI - Sequential Fuel Injection

SOHC - Single Overhead Cam

SPRCHG - Supercharged Engine

SRW - Single Rear Wheels

SULEV - Super Ultra-Low Emission Vehicle

TG - Turbo Gas (fuel type)

Turbo - Turbocharged Engine

ULEV - Ultra Low Emissions Vehicle

V - Valve

V6 - Six-Cylinder Engine

V8 - Eight-Cylinder Engine

VTEC - Variable Timing and lift Electronic Control system

VVT - Variable Valve Timing

WB - Wheelbase

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Used Car

What is the Kelley Blue Book® Fair Purchase Price for used cars?

What is Fair Market Range for used cars?

What is Typical Listing Price?

What is Kelley Blue Book Typical Listing Price (Certified Pre-Owned)?

How often do you update your used car values and pricing?

How does mileage affect a car's price or value?

Does your used car pricing account for my region?

Do you have Canadian pricing?

Do you have pricing for other countries?

Does Kelley Blue Book provide escrow services for vehicle purchases or guarantee online vehicle purchase transactions?

I'm not in the United States. Can I still get a Used Car Report?

Do you still sell the printed editions of Kelley Blue Book?

What do the abbreviations on your site mean?

Contact Us

Business Inquiries

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Mailing Address

195 Technology, Irvine, CA 92618

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What Is The Kelley Blue Book® Fair Purchase Price For Used Cars?

This is the price that Kelley Blue Book has determined people like you are typically paying a dealer for a used car with typical mileage in good condition or better. This price is based on actual used-car transactions and adjusted regularly as market conditions happen to change.

What Is Fair Market Range For Used Cars?

The Fair Market Range is Kelley Blue Book's estimate of what you can reasonably expect to pay this week for a vehicle with typical mileage and options (or with the miles and options you specify), excluding taxes, title and fees when purchasing from a dealer. Each dealer sets and controls its own pricing.

What Is Typical Listing Price?

Formerly known as Suggested Retail Price, the Kelley Blue Book Typical Listing Price is representative of dealers' asking prices. It assumes that the vehicle has been fully reconditioned and has a clean title history. This price also takes into account the dealer's profit, costs for advertising, sales commissions and other costs of doing business. The final sale price will likely be less depending on the vehicle's actual condition, popularity, type of warranty offered and local market conditions. In other words, it's the price you should expect a dealer to ask – not always the price you should pay.

What Is Kelley Blue Book Typical Listing Price (Certified Pre-Owned)?

Formerly known as the Certified Pre-Owned (CPO) Price, the Kelley Blue Book® Typical Listing Price (CPO) is representative of dealers' asking prices for a used car covered by the manufacturer's warranty in its CPO program. It assumes that the vehicle has been fully reconditioned and has a clear title history. The price also takes into account the dealers' profit, costs for advertising, sales commissions and other costs of doing business, while also factoring in any value associated with the CPO program.

For most vehicles, CPO coverage typically increases market value between \$1,000 and \$2,000. The final sale price may vary according to the vehicle's actual condition, popularity, type of warranty offered and local market conditions. In other words, it's the price you should expect a dealer to ask – not always the price you should pay.

How Often Do You Update Your Used Car Values And Pricing?

We update or verify Trade-In Values, Private Party Values and the used car Fair Purchase Price at least once a week. However, an update doesn't necessarily mean that every vehicle will change in value. The values we provide are based on several factors including the current marketplace conditions and trends, which can vary widely.

How Does Mileage Affect A Car's Price Or Value?

Kelley Blue Book employs a team of statisticians who analyze millions of transaction records to determine the typical mileage of a vehicle based on its age and time spent on the road. The typical mileage for a particular car changes regularly based on the data in our transaction records. If a vehicle's mileage is higher or lower than the typical mileage, we adjust its value up or down accordingly.

Does Your Used Car Pricing Account For My Region?

Yes. Kelley Blue Book understands the importance of providing pricing that is geographically relevant to consumers and dealers. In order to better meet the needs of the industry, we produce values based on 134 geographic regions in the US. Each region is analyzed individually to reflect local pricing and local economic conditions.

Do You Have Canadian Pricing?

Yes. Pricing and other info on KBB.com is specific to the U.S., but in 2020, Kelley Blue Book started providing data for the Canadian market. Canadian pricing will follow soon and will be adjusted for each province & territory to reflect local economic and market conditions. You can find KBB Canada at KBB.ca.

Remember that vehicles sold in Canada (and other countries) often differ from their U.S. counterparts in engine spec and optional equipment.

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Does Kelley Blue Book Provide Escrow Services For Vehicle Purchases Or Guarantee Online Vehicle Purchase Transactions?

No, Kelley Blue Book does not participate in new or used vehicle transactions. Read more about protecting yourself from online fraud. [More](#)

I'm Not In The United States. Can I Still Get A Used Car Report?

Kelley Blue Book information is based on cars originally sold in the United States that are now being bought or sold in the United States. You can get a report, but you'll have to enter a U.S. ZIP code, since regional factors affect the values.

Do You Still Sell The Printed Editions Of Kelley Blue Book?

No. For over 90 years, Kelley Blue Book published *Used Car Guides* providing values for used cars and trucks. For over 40 years, Kelley Blue Book published the *Motorcycle Guide*, but in 2017, we published our last printed book. These decisions are never easy.

The good news? If you need to get the value of your current car or are interested in what you should pay for your next car, you can still find 21 years of new and used car pricing right here on KBB.com. In addition, we also offer values for motorcycles and ATVs.

If you would like to learn about other options to receive Kelley Blue Book® Values, or have any questions, please call KelleyKare at (800) 258-3266.

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MSRP – Manufacturer's Suggested Retail Price

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N/A – listed in the pricing columns means that at this time the pricing information is Not Available.

N/C – means that there is No Choice for this item

NVL – means that there is no charge for this item.

PFI – Port Fuel Injection

PLO – Port Installed Options

PZEV – Partial Zero Emissions Vehicle

SFI – Sequential Fuel Injection

SOHC – Single Overhead Cam

SPRCHG – Supercharged Engine

SRW – Single Rear Wheels

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WB – Wheelbase

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My Car's Value

How can I get the value of my car on a past date?

How do I see the Blue Book® Value for my vehicle?

What are Trade-in Values?

What is the Trade-in Range?

What are Private Party Values?

What is the Kelley Blue Book® Instant Cash Offer?

How is an Instant Cash Offer different from Trade-in Range?

Is it better to trade in my car or sell it myself?

How do I determine what condition my current car is in?

My car has air conditioning, but it's broken; do I still check the box marked AC?

Can I sell my car on your site?

My car has a salvage title. How does that affect the value?

What about the value of equipment on my car that you don't have listed?

Why don't you value aftermarket equipment?

I purchased my car outside the US, but it is now registered here. What's the value of it?

I totaled my car. How will the insurance company determine what it was worth?

My car is more than 21 years old. How do I find its value?

Why doesn't Kelley Blue Book list trade-in values, private party values, or a used car Fair Purchase Price for Lotus, Ferrari, Bentley, etc.?

I bought a new car a few months ago and I would like to check its used value. When will it be listed?

What is the difference between the Trade-In Value I see on your site and the Blue Book® Lending Value?

How Can I Get The Value Of My Car On A Past Date?

Occasionally we get a request for the value of a particular vehicle at a particular date in history. This request may be for litigation, estate planning, taxes, etc. The fee for a Valuation Certified Report is \$35 per value. To request a Valuation Certified Report, please contact Customer Service at 1-800-258-2005, option 1. This service usually has a turnaround time of 3-5 business days. We usually send the Report via email, but we can also mail it if requested.

How Do I See The Blue Book® Value For My Vehicle?

To get to the value for your car, navigate the path to the Blue Book Trade-In and Private Party Values:

- On the home page or under "Car Values" from the top navigation, select "My Car's Value".
- Tell us the year, make, model and mileage of the car you own (2015> Honda> Civic>30000 miles). Verify the ZIP code.
- Choose your car's category (sedan vs wagon) and style (DX, EX, LX). Note: Many vehicles only come in one category, but most vehicles are sold in more than one style, which some sites call "trim". Whatever you call it, these are pre-packaged levels of equipment – and they definitely affect the price or value of a car.
- Add any additional equipment or options (packages, alloy wheels, moon roof, premium sound, etc.)
- Choose what you're most likely to do – Trade In to a Dealer or Sell to a Private Party.
- Tell us the car's condition (Excellent, Very Good, Good, or Fair) or, if you're not sure, take the Condition Quiz. Most cars we see are in "Good" condition.
- View the Blue Book Value based on your ZIP code and your car's age, mileage, equipment, and condition.

What Are Trade-In Values?

Trade-In Value is what you can expect to receive for your current car when trading it in at a dealer, assuming you've chosen the accurate condition. (Most people overestimate the condition of their car. As a reference, most of the cars we see are in "Good" Condition.) The Trade-In Value presupposes that you're buying another vehicle from the same dealership. The Trade-In Value will be less than the Private Party Value because the reselling dealer has to pay to recondition the car, perform safety inspections and incur other costs of doing business.

Contact Us

Business Inquiries

b2b.kbb.com

Mailing Address

195 Technology, Irvine, CA 92618

[Map](#)

What Is The Trade-In Range?

The Trade-In Range is an estimate of what you can reasonably expect to receive for a vehicle with the miles and options you specify, when trading in the car at a dealer. It generally presumes that you will buy another car from the same dealer.

What Are Private Party Values?

Private Party Value is what a buyer can expect to pay when buying a used car from a private party. It may also represent the value you might expect to receive when selling your own used car to another private party. The Private Party Value assumes the vehicle is sold "As is" and carries no warranty (other than the continuing factory warranty, if any). The final sale price may vary depending on the vehicle's actual condition and local market conditions. This value may also be used to derive the vehicle's value for insurance and vehicle donation purposes.

What Is The Kelley Blue Book® Instant Cash Offer?

The Kelley Blue Book® Instant Cash Offer is a real offer for a specific amount to purchase a consumer's car or apply the amount toward another car. The Offer is valid for 3 days (not counting Sundays) and can be immediately redeemed during business hours at any Participating Dealer, pending inspection. It is based on specific elements of the consumer's car, like installed options, specific condition (such as dents and mechanical issues) and local market demand.

How Is An Instant Cash Offer Different From Trade-In Range?

The Kelley Blue Book® Instant Cash Offer is:

- A fixed offer applied toward your next car purchase or used to sell your current car to a Participating Dealer (pending inspection)
- Valid for 3 days (not counting Sundays)
- Based on specific details related to the condition and features of your car, like installed options, dents, mechanical issues, and local market demand

The Kelley Blue Book® Trade-In Value is:

- An estimated trade-in value used toward the purchase of another car only
- Updated weekly
- Applied to similar cars of the same year, make, model, style and general condition
- The general value Kelley Blue Book estimates consumers can expect to negotiate this week based on the style, condition, mileage and options of the vehicle when they trade it in to a dealer, however every dealer is different and values are not guaranteed

Is It Better To Trade In My Car Or Sell It Myself?

This is a question of personal preference. When you trade a car in, the dealer must then absorb the cost of making the vehicle ready for sale, reconditioning, advertising, sales commissions, arranging financing and insurance and standing behind the vehicle for any mechanical or safety problems. You may get more for your car if you sell it yourself, but you need to consider the value of your time, the aggravation of performing at least some of the above tasks to get the vehicle into a suitable resale condition and the liability of making appointments and giving a test drive. See more about Selling vs. Trading in our Advice Section.

How Do I Determine What Condition My Current Car Is In?

We know you're not an expert, but you also know your car best. Just be as honest with yourself as possible. Most people tend to overestimate the condition of their car. To help out, we post the percentage of vehicles we value that match each condition. For example, if only 3% of the vehicles in the market are considered "Excellent" condition, chances are that your car isn't one of them. If you aren't sure, take our condition quiz.

My Car Has Air Conditioning, But It's Broken; Do I Still Check The Box Marked AC?

Yes. But in fairness, you would need to deduct the cost to repair the broken equipment from the total vehicle price. There is one exception: when the cost of the repair is higher than the value of the broken item, it's best not to include that item in the list of optional equipment.

Can I Sell My Car On Your Site?

Yes. As private party, you've got the same opportunity as a dealership: to reach millions of serious car shoppers with a listing on KBB.com and Autotrader. To create, purchase and post your car's classified ad, [get started here](#).

My Car Has A Salvage Title. How Does That Affect The Value?

A salvaged, reconstructed or otherwise "clouted" title has a permanent negative effect on the value of a vehicle. The industry rule of thumb is to deduct 20% to 40% of the Blue Book® Value, but salvage title vehicles really should be privately appraised on a case-by-case basis in order to determine their market value.

What About The Value Of Equipment On My Car That You Don't Have Listed?

There are some options (e.g., rims, alarm systems, heated seats, trip computers) that are not addressed on our site. Most of these are dealer-installed or aftermarket. These items don't have a consistent or reportable added value in the used marketplace. That is not to say that such options are worthless as they may make your vehicle more marketable against similar models; however we do not address options when there is not a consistent value to report.

Why Don't You Value Aftermarket Equipment?

This can be confusing for a lot of people: "Why do you show a luggage rack as optional, but not the ski rack I installed myself?" We only value items which are either factory-installed or "factory quality." There is a tremendous variation in something like rims, so it would be impossible to list - and report values for - all the different options. Space does not allow us to identify the vast variety of aftermarket items.

I Purchased My Car Outside The US, But It Is Now Registered Here. What's The Value Of It?

The values you see on KBB.com only apply to vehicles sold in the United States, but we do maintain sites in Canada and Brazil to supply the values for those markets. Cars imported through sources other than factory authorized distributors are considered gray market vehicles.